

14 DEPOSITION OF ROBERT D. MOODIE,
15 witness in the above-entitled action, taken
16 under the provisions of Chapter 804,
17 Wisconsin Statutes, before Meredith A.
18 Kroening, a Notary Public in and for the
19 State of Wisconsin, at the offices of
First Law Group, 2900 Hoover Road, Suite A,
Stevens Point, Wisconsin on the 28th day of
April, 2011, commencing at 9:00 a.m. and
terminating at 11:49 a.m.

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21
22
23
24

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2 (Original exhibits attached to original
transcript; copies attached to transcript copies.)

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4 OBJECTION INDEX

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6 (No objections were made during the taking of this
deposition.)

OBJECTION INDEX

5 BY: PAGE:
6 (No objections were made during the taking of this deposition.)

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A P P E A R A N C E S

3 FOR THE PLAINTIFF: FOLEY & LARDNER, LLP
ATTORNEY MATTHEW D. LEE
4 150 East Gilman Street
Madison, WI 53703-1481

7 DEFENDANT ROBERT D. MOODIE PRO SE

ROBERT D. MOODIE,
called as a witness, after being first
duly sworn, was examined and testified
as follows:

EXAMINATION

BY MR. LEE:

Q Can you state your name -- your full name
for the record, please?

A Robert D. Moodie.

Q And can you spell your last name, please?

A M-o-o-d-i-e.

Q What is your address, Mr. Moodie, your
home address?

A 2401 Rainbow Drive, Plover, Wisconsin
54467.

Q And what is your date of birth?

A November 15, 1946.

Q Are you married?

A Yes.

Q Do you have children?

A Yes.

Q How many?

A Two.

Q We do the easy questions first. Have you
ever been deposed before?

		5			7
1	A	Not that I can recall.	1	Q	Which documents did you review?
2	Q	I'll give you some basic guidelines for the deposition. I ask that you answer my questions with an audible answer like yes or no rather than a head nod or a head shake or a shrug or something. Do you understand?	2	A	I tried to read the civil procedures.
3			3	Q	Okay. Any other documents?
4			4	A	No.
5			5	Q	Did you meet with a lawyer?
6			6	A	No.
7			7	Q	And you're not being represented by a lawyer today, correct?
8	A	Yes.	8	A	That's correct.
9	Q	And if at any time you don't understand a question that I ask, will you let me know?	9	Q	You understand you're allowed to have counsel present today on your behalf,
10			10	Q	correct?
11	A	Yes.	11	A	Yes.
12	Q	And if at any time you feel you need to go back and correct one of your previous answers, will you let me know so we can go back and do that?	12	Q	You nevertheless have decided of your own volition not to have counsel present, right?
13	A	Yes.	13	A	Yes.
14	Q	If at any time you need to take a break, just let me know, and we can do that. I only ask that if you feel you have to take a break and I've submitted a question to you, you answer the question before we take a break. Does that sound okay?	14	Q	Trial is coming up next month. Do you intend to represent yourself at trial?
15			15	A	At this point, yes. It might change.
16			16	Q	Let's talk a little bit about your background. What high school did you attend?
17			17	A	Ripon High School.
18			18	Q	In Ripon, Wisconsin?
19					
			6		8
1	Q	Do you understand these instructions?	1	A	Yes.
2	A	Uh-huh. Yes.	2	Q	And when did you graduate?
3	Q	There you go. I know that you've recently had some medical operations, and I wanted to make sure that you don't feel that any medications you're taking would in any way impair your testimony today.	3	A	1965.
4			4	Q	Did you attend college?
5			5	A	Yes.
6			6	Q	What college did you attend?
7			7	A	Oshkosh State University.
8			8	Q	When did you graduate?
9	A	Would you agree with that statement?	9	A	1969.
10	Q	Yes.	10	Q	And what degree did you graduate from
11			11		
12			12	A	Oshkosh with?
13	A	Is there any reason sitting here today that you won't be able to answer my questions completely and truthfully?	13	Q	Business administration.
14	Q	Not unless I don't know the answer.	14	Q	What was your major? Business
15	A	And if you don't know the answer you just say you don't know the answer.	15	A	administration?
16	A	Yes.	16	Q	Right.
17	Q	Okay. Did you do anything to prepare for this deposition?	17	Q	Okay. So you received a bachelor's degree in business administration from Oshkosh, correct?
18			18	A	Yes.
19	A	I -- I guess so, yes.	19	Q	Do you have any further educational
20	Q	What did you do?	20	A	training beyond that degree?
21	A	Just tried to think ahead of what might be coming at me. I didn't have any	21	A	No.
22			22	Q	Where are you currently employed?
23			23	A	Moodie, Incorporated.
24	Q	counsel or anything.	24	Q	What business does Moodie, Incorporated
25	A	Did you review documents?	25		
		A few, yes.			

	9		11
1	perform?	1	graduated from Oshkosh until you started
2	A Trucking business.	2	at Bluemke?
3	Q And when you say the trucking business,	3	A No. I think I -- I drove truck in there
4	what do you mean?	4	for maybe a half a year when I got out of
5	A We haul freight.	5	the service. I drove truck for six
6	Q Would you say that you operate	6	months or a year, something like that.
7	nationally?	7	Q Let me just make sure I have the
8	A We have authority to run in all 48	8	chronology correct. You graduated
9	states, but we are confined mostly to the	9	from --
10	Midwest.	10	A Oshkosh.
11	Q What's your position at Moodie,	11	Q -- Oshkosh State University in 1969?
12	Incorporated?	12	A I was immediately drafted.
13	A Vice president.	13	Q And you served for about two years in the
14	Q And what do your duties entail?	14	Army?
15	A Office, some bookkeeping, payroll,	15	A Uh-huh.
16	purchasing.	16	Q Yes?
17	Q Are you a part owner of the company?	17	A Yes.
18	A Yes.	18	Q And then you drove a truck for six to 12
19	Q Who do you share ownership with?	19	months?
20	A My brother.	20	A Yeah. Something like that. Yeah.
21	Q What's your brother's name?	21	Q And --
22	A David.	22	A Then I went to the hardware store -- it's
23	Q David Moodie, right?	23	a hardware store.
24	A Right.	24	Q Bluemke is a hardware store?
25	Q Did you and your brother start the	25	A Right.
	10		12
1	company?	1	Q You did that for about a year?
2	A Yes.	2	A Yeah.
3	Q What year did you start it?	3	Q And then you and your brother started
4	A 1973.	4	Moodie, Incorporated?
5	Q And have you worked at Moodie,	5	A Right.
6	Incorporated since 1973?	6	Q And you've been there ever since?
7	A Yes.	7	A Right.
8	Q Have you had any other jobs since 1973?	8	Q Now, in your summary judgment response
9	A No.	9	brief you described yourself as -- and
10	Q What did you do before you and your	10	I'm quoting -- a private citizen who
11	brother started Moodie, Incorporated?	11	occasionally invests in real estate
12	What did you do for a living?	12	ventures for the purpose of profit?
13	A I did some bookkeeping. And then I was	13	A Right.
14	in the service before that.	14	Q What do you mean by that?
15	Q Where did you do bookkeeping?	15	A I bought raw land here in Plover,
16	A Bluemke in Rosendale, Wisconsin. I was	16	subdivided it, 50 lots, sold them. I
17	there for maybe a year.	17	bought raw land in Wisconsin Rapids, 200
18	Q And before that you said you were in the	18	acres on the edge of town, held it for
19	service?	19	some years, cut the trees, cleaned it up,
20	A Right.	20	moved high lines and sold it to the City
21	Q What branch of the military?	21	of Wisconsin Rapids for the east side
22	A Army.	22	industrial park. I did a 15-acre
23	Q Did you serve in Vietnam?	23	subdivision in Wisconsin Rapids with 20
24	A No.	24	lots and then bought this property in
25	Q Were you in the Army from the time you	25	downtown Stevens Point.

		13		15	
1	Q	The property that's the subject of the lawsuit?	1	Q	Do people hunt on it?
2	A	Right. I had an 84-lot mobile home park in Pensacola, Florida.	2	A	I don't, but some people do, yeah.
3	Q	When you say you had it, did you purchase it?	3	Q	Okay.
4	A	Yes, and sold it. And then I invested in Travis Towers, Houston, Texas, a 22-story office building and parking ramp, downtown Houston. And I sold that, my share --	4	A	I have a one-acre lot in the City of Ripon industrial park.
5	Q	When did you sell it? I'm sorry.	5	Q	Is it a vacant lot?
6	A	I sold my share of that.	6	A	Yes. Okay. I think that's it.
7	Q	So we've got the raw land in Plover, raw land in Wisconsin Rapids, 200 acres.	7	Q	Have you ever worked in the real estate business? Strike that. Have you ever worked for a real estate company?
8	A	We've got a 15-acre subdivision in Wisconsin Rapids. We've got the land that abuts the Stevens Point reservoir, which is the subject of this lawsuit. An 84-lot mobile home park in Pensacola, Florida.	8	A	No.
9	Q	Which I bought and sold.	9	Q	Are you a licensed real estate agent?
10	A	Which you bought and sold. You owned a portion of the Travis Towers in Houston, Texas, which is a 22-story office	10	A	No.
11	Q		11	Q	Have you ever done appraisal work?
12	A		12	A	Just for myself. Not -- I never hired out, no.
13	Q		13	A	Are you a licensed appraiser?
14	A		14	Q	No.
15	Q		15	A	When you say you did appraisal work for yourself, what do you mean by that?
16	A		16	Q	Well, I'm capable of going to the courthouses and getting comparables and things like that, same as appraisers do.
17	Q		17	A	When you -- can you describe your process of appraising a property, the process you
18	A		18	Q	
19	Q		19	A	
20	A		20	Q	
21	Q		21	A	
22	A		22	Q	
23	Q		23	A	
24	A		24	Q	
25	Q		25	A	
		14		16	
1		building and parking ramp?	1		use?
2	A	Right.	2	A	Go to the register of deeds, look up properties that were sold, see how much they were sold for and see how they were developed, what use they had.
3	Q	Any other real estate ventures you've been involved in besides your own personal residential real estate?	3	A	
4	A	I own some farm land.	4	Q	
5	Q	Where's the farm land?	5	A	
6	A	I have 35 acres in the Town of Ripon,	6	Q	
7	Q	Fond Du Lac County. 80 acres town of Eau Pleine, Portage County.	7	A	
8	A		7	Q	
9	Q		8	A	
10	A		9	Q	
11	Q		10	A	
12	A		11	Q	
13	Q		12	A	
14	A		13	Q	
15	Q		14	A	
16	A		15	Q	
17	Q		16	A	
18	A		17	Q	
19	Q		18	A	
20	A		19	Q	
21	Q		20	A	
22	A		21	Q	
23	Q		22	A	
24	A		23	Q	
25	Q		24	A	
			25	A	
					(At this time, the court reporter admonished the witness to answer verbally.)
					THE WITNESS: Yes.
					EXAMINATION

	17		19
1	BY MR. LEE:	1	it and how much you sold it for and, if
2	Q Any other factors that you can think of?	2	you do still own it, how much you think
3	Right now we've got the location of the	3	it's worth. Does that sound okay?
4	property, how the property is used and	4	A All right.
5	the features of the property, including	5	Q Let's start with the raw land in Plover
6	the improvements and the topography of	6	that you subdivided into 50 lots. I take
7	the property.	7	it you don't own any of that anymore?
8	A Sale prices, of course.	8	I don't own any anymore.
9	Q How do you compare sale prices? Like	9	Q You sold all 50 lots?
10	what kind of prices are you comparing?	10	A Right.
11	A What a similar property sold for compared	11	Q When did you subdivide that property?
12	to my property or another property that	12	A I'm guessing about 1996 or '7 I started,
13	I'm looking at. I imagine it's the same	13	something like that.
14	procedure that an appraiser uses.	14	Q And were you the seller of each of the 50
15	Q I think I understand what you're saying,	15	lots?
16	but I just want to clarify. You look at	16	A broker actually did the paperwork.
17	the sale price of a property you think is	17	Q Each of the buyers bought the lot from
18	comparable based on the factors you just	18	you as opposed to some LLC or some third
19	listed, and you take that and determine	19	party, correct?
20	how much you think your property should	20	A Right.
21	or would sell for, correct? Right?	21	Q Obviously, we're not going to go through
22	A I suppose that's what I'm saying.	22	all 50 lots. But did you sell the lots
23	Q Okay. That's fine. The reason I asked	23	for roughly or approximately on average
24	you again is because I think we talked	24	what you thought they were worth?
25	over each other, and I wanted to clear it	25	A Yes.
	18		20
1	up for the record.	1	Q Moving on to the raw land in Wisconsin
2	A I don't like answering leading questions	2	Rapids, the 200-acre land, you said you
3	but --	3	held that for a while and then sold it to
4	Q Well, if I were to go through the list of	4	the City of Wisconsin Rapids for
5	properties you just gave me that you have	5	industrial development, correct?
6	an ownership interest in and asked you	6	A Uh-huh.
7	for what you believe the approximate	7	Q Yes?
8	value of each of those properties are,	8	A Yes.
9	would you be able to tell me?	9	Q When did you sell it to the city?
10	A I could tell you what I would sell them	10	A Oh, I -- it was over -- I can't say for
11	for probably.	11	sure. It was in the early '90s.
12	Q Okay.	12	Q That's fine.
13	A Now, it might be more than what you think	13	A And it was -- they paid for it over a
14	they're worth, but that's what they're	14	period of three or four years, too. They
15	worth to me. So --	15	didn't pay for it all at once.
16	Q Well, and actually I'm going to go	16	Q Did they buy all 200 acres in one
17	through the properties anyway because I'm	17	transaction?
18	not clear on which ones you still own.	18	A Right. Right. But they just delayed
19	A Okay.	19	payments over, I think, a three-year
20	Q I'll start with the first one you listed,	20	period or four.
21	which is the raw land in Plover, and I'll	21	Q Do you recall what the sale price was,
22	work my way down the list. And for each	22	approximately?
23	one I'll ask you if you still own it.	23	A 500,000.
24	A Okay.	24	Q You also said that you owned a 15-acre
25	Q If you don't still own it, when you sold	25	subdivision in Wisconsin Rapids. Strike

	21		23
1	that. You had had a 15-acre lot that you	1	After you sold the mobile home park you
2	subdivided into 20 lots?	2	purchased an ownership interest in the
3	A Right.	3	Travis Towers in Houston, Texas, correct?
4	Q And when did you -- when did you	4	A Correct.
5	subdivide it? When did it become	5	How did you get connected with that?
6	subdivided?	6	I -- I have a friend in Alabama that
7	A It was probably -- probably around the	7	is -- knows investment opportunities.
8	year 2000, 2001 or '2, in there some	8	And he told me about it.
9	place. I'm sorry.	9	How long were you -- how long did you
10	Q Approximate dates are fine. I know we're	10	have an ownership interest in that
11	going back a ways.	11	property?
12	A Yeah. Yeah.	12	Probably three years.
13	Q And have you sold all 20 lots?	13	So you sold it in about 2007?
14	A No. I sold five.	14	Probably. Or '8.
15	Q Are the lots all of equal size?	15	And how much did you sell that for?
16	A No.	16	I think -- I think it was -- I think
17	Q What is the range of the size of the	17	940,000. I'm not exactly sure on that.
18	lots?	18	And again was that more or less or about
19	A Half acre to three-quarter acre.	19	what you thought it was worth?
20	Q What is the range of prices that you're	20	That's what I thought it was worth.
21	seeking?	21	You say you hold 35 acres of farm land in
22	A 26, 27 thousand.	22	the Town of Ripon?
23	Q And the five that you sold, did you get	23	Right. Yes.
24	about that price?	24	Right is a fine answer.
25	A Uh-huh.	25	Okay.
	22		24
1	Q Yes?	1	Just uh-huh or huh-uh don't work well.
2	A Yes.	2	And when did you buy that, that farm
3	Q I'll skip the land that abuts the Stevens	3	land?
4	Point reservoir for now. We're going to	4	Year-and-a-half ago.
5	talk about that a lot. Skip to the	5	And how much did you pay for it?
6	84-lot mobile home park in Pensacola,	6	120,000.
7	Florida. Now, you said that you	7	Are you looking to sell it?
8	purchased that as one single piece of	8	Not necessarily.
9	land, right?	9	Not actively?
10	A Right.	10	No.
11	Q Did you subdivide that?	11	How much do you think that land is worth
12	A No.	12	right now?
13	Q So did you just then lease spots to	13	Probably 130.
14	mobile home residents?	14	You also said that you own 80 acres of
15	A Right.	15	farm land in the Town of Eau Pleine?
16	Q How long did you own that property for?	16	Yes.
17	A Probably ten years.	17	When did you buy that?
18	Q When did you sell it?	18	Probably 15 years ago.
19	A Let's see. 2005 probably. Or '4. 2004	19	15 years ago?
20	maybe.	20	Yeah. At least.
21	Q Do you recall how much you sold it for?	21	So that's 1996?
22	A 825,000.	22	Might even have been sooner than that.
23	Q And was that more or less or about the	23	Maybe 1990 even. Time goes fast. 1995,
24	same as what you thought it was worth?	24	somewhere in there.
25	A That's what it was worth.	25	Do you remember how much you paid for it?

		25		27	
1	A	I believe it was 46,000.	1	diligence before I bought anything.	
2	Q	And how much do you think it's worth now?	2	Q	And what do you mean by due diligence?
3	A	Well, the DNR has been trying to buy it.	3	A	Make sure the land is as it's advertised,
4		I've turned down, I don't know, 160 or	4		as it's being sold, you know, that it's
5		something. It's probably worth 200,000.	5		worth what I'm paying for it and it
6	Q	Are you actively trying to sell that	6		has -- I'll leave it there.
7		property?	7	Q	Do you think that the work you do to
8	A	No.	8		appraise property -- well, strike that.
9	Q	You also said you own 77 acres of farm	9		Do you think you're as qualified an
10		and recreation land in the Town of	10		appraiser as any licensed appraiser? An
11		Rudolph in Wood County; is that correct?	11		appraiser of real estate, I mean.
12	A	Correct.	12	A	State the question again.
13	Q	And when did you buy that land? We're	13	Q	Sure. You've spent a lot of time
14		almost to the end. It's this one and one	14		inspecting property, examining property,
15		more.	15		appraising property. Would you agree?
16	A	That's got to be ten years ago.	16	A	Yes.
17	Q	Do you remember what you paid for it?	17	Q	Do you think you're pretty good at it?
18	A	60,000.	18	A	I've been successful at it.
19	Q	How much do you think it's worth now?	19	Q	Do you think that your ability to
20	A	I'd say 180,000.	20		appraise a property is equal to, say, a
21	Q	Have you made any improvements to that	21		licensed appraiser?
22		property since you bought it?	22	A	I think my ability is -- I know I don't
23	A	I haven't personally, no. Some people do	23		have the procedures that they use,
24		farm it, and they've improved the land by	24		necessarily. But I think I'm pretty
25		fertilizing it. But I've never done	25		thorough at it.
		26		28	
1		anything.	1	Q	What procedures do you think licensed
2	Q	And then finally you said you owned a	2		appraisers or professional appraisers use
3		one-acre vacant lot in the City of Ripon	3		that you don't use?
4		industrial park; is that right?	4	A	Well, they weight things and they take --
5	A	That's right.	5		they equate this property to this
6	Q	When did you buy that?	6		property. And they say, this is only
7	A	Five years ago.	7		worth 70 percent of that. And I don't
8	Q	How much did you pay for it?	8		know all their little gimmicks and rules
9	A	It was between 16 and 17 thousand. Like	9		that they use to get that and why they're
10		16,700.	10		even relevant. You know, that's what
11	Q	What do you think it's worth now?	11		they do.
12	A	I just turned down 30 last week. I told	12		Maybe I do it in my head. But
13		them 35 is what I'd take. So I'm not	13		these little gimmicks of, like I said,
14		actively trying to sell it either.	14		weighing one against the other, and this
15	Q	Okay. You have a lot of experience	15		is only worth 90 percent of that, I don't
16		buying and selling real estate. Would	16		know how they come up with that. That's
17		you agree?	17		something that's fairly subjective on
18	A	Yes.	18		their part. But I guess that's their
19	Q	Is there anything else in your background	19		accepted way of doing things. I don't
20		that you think is relevant to this	20		necessarily go along with it.
21		dispute?	21	Q	Do you think your appraisal method is
22	A	In my background?	22		more objective than a licensed
23	Q	In your background as a real estate	23		appraiser's?
24		enthusiast.	24	A	Just as.
25	A	In all of these, I think I've done due	25	Q	Just as objective?

		29		31	
1	A	Yes. The gimmicks they're using with taking this as a percentage of that or, you know, instead of looking for identical or nearly identical pieces of property, they're taking the easy way out and then applying these factors to it that I don't think are too relevant so --	1	A	That's okay.
2		MR. LEE: Okay.	2	Q	Now, there's no dispute, as far as you know, that all of the land, I guess, north of this northern boundary of parcel B is owned by you, correct? The land abutting parcel B to the north you own, right?
3		(Moodie Exhibit No. 1 marked for identification.)	3		
4		EXAMINATION	4		
5		BY MR. LEE:	5		
6	Q	Showing you what's been marked Moodie Exhibit 1, take a minute to review it if you'd like. Please don't mark on it, though.	6	Q	And there's no dispute that Consolidated Water Power Company is not trying to condemn or otherwise acquire any of that land, correct?
7	A	Okay.	7	A	Correct.
8	Q	Do you recognize Exhibit 1?	8	Q	Okay. I'd like to refer to all the upland property as your land or the upland property. Is that okay?
9	A	Yes.	9	A	That's okay.
10	Q	Can you tell me what it is?	10	Q	The point is, will you know what I'm talking about if I refer to all these things as I've just described?
11	A	Notice of condemnation.	11	A	Sure.
12	Q	And there's an exhibit to Exhibit 1, correct?	12	Q	Okay. Good. Now, you claim -- referring you back to page 4 of Exhibit 1, you
13	A	Correct.	13		
14	Q	Exhibit A, correct?	14		
			30		32
1	A	Correct.	1		claim that you own parcel B, correct?
2	Q	Do you recognize the document attached as Exhibit A?	2	A	That's correct.
3			3	Q	Are there any other owners besides you?
4	A	Yes.	4	A	No.
5	Q	Can you tell me what it is?	5	Q	Referring to parcel A, you do not claim to own any portion of that parcel, correct?
6	A	It's a survey of the proposed condemnation land.	6	A	No.
7	Q	Performed by Badger-Land Surveying, correct?	7	Q	Do you have any idea who, if anyone, might own that parcel?
8	A	Right.	8	A	No, I don't.
9	Q	Do you recall being served with the notice of condemnation at the beginning of the lawsuit?	9	Q	Do you believe that Consolidated Water Power Company owns it?
10	A	Yes.	10	A	No.
11	Q	Just to talk about terminology for the purposes of the deposition, I would like to refer to this land marked parcel B, delineated as parcel B, on, I guess, page 4 of Exhibit 1 as either parcel B or the Moodie parcel. Is that okay with you?	11	Q	By the way, if I refer to Consolidated Water Power Company as CWPCo, will you know what I'm talking about?
12	A	Fine.	12	A	Yes, I do.
13	Q	And then I'm going to refer to parcel A, and we're not going to have many questions on that as parcel A or the anonymous parcel. Is that okay with you?	13	Q	You are not challenging CWPCo's adverse possession of parcel A?
14			14	A	No, I'm not.
15			15	Q	You're not challenging CWPCo's right to take parcel A under the Federal Power Act, correct? You're not challenging that?

		33		35
1	A	I'm not challenging it, and I'm not condoning it.	1	A Yes.
2	Q	Okay. Now, when you acquired parcel B you acquired it by deed, correct?	2	Q Did you create Exhibit 2?
3	A	Correct.	3	A Yes.
4	Q	Warranty deed?	4	Q Can you tell me what it is?
5	A	Correct.	5	A It's a drawing -- not a survey, but a drawing -- pretty accurately, of the five different parcels that I assembled on the Wisconsin River downtown Stevens Point.
6	Q	And did you -- strike that. You acquired all of parcel B in one transaction, correct?	6	9 Okay. Can you point out, without marking on Exhibit 2, approximately where the freight terminal building is located?
7	A	Along with the balance of the 2.9 acres in that parcel, right.	10	11 A It's on the first parcel that I acquired on the map -- on my drawing. It's labeled number 1.
8	Q	Right. The point being is that you didn't -- you didn't acquire, like, half of parcel B with one purchase and the other half in another purchase, right?	12	13 Q Is it down near the river? Is it up towards the street?
9	A	That's correct.	14	15 A It's in this area right here (indicating).
10	Q	Do you have an opinion on the total acreage of parcel B?	16	17 MR. LEE: So let the record reflect that Mr. Moodie just indicated an area right around where the number 8-14-98 is located.
11	A	No.	18	20 21 22 EXAMINATION
12	Q	CWPCo and its surveyors have estimated parcel B to be approximately 0.41 acres in size. Do you have any reason to dispute that?	23	24 BY MR. LEE:
13	A	No.	25	Q Did I describe that accurately?
		34		36
1	Q	Now, there are no buildings located on parcel B, correct?	1	A It's close enough.
2	A	Correct.	2	Q That's where the freight building is located. You said there was another building on the property, correct?
3	Q	There are buildings located on your upland property, though, correct?	3	4 A Correct.
4	A	Correct.	5	6 Q And where is that located?
5	Q	How many buildings are there?	7	8 A It's on the drawing labeled parcel number 5.
6	A	Two.	9	10 Q And can you point out again where on the drawing that would be located?
7	Q	Can you describe one of them and approximately where they sit on the upland property?	11	12 A Right here (indicating).
8	A	There's a freight terminal building that's two sections. One of the sections is 36 by 62. The other section is about 40 by 42. It's on the parcel of land that I acquired with parcel B.	13	14 MR. LEE: Let the record reflect that Mr. Moodie just indicated the narrow shaded area up near West Clark Street.
9	Q	(Moodie Exhibit No. 2 marked for identification.)	15	16 EXAMINATION
10	A		17	18 BY MR. LEE:
11	Q	Showing you what's been marked Moodie Exhibit 2, you can take a minute to review that if you'd like.	19	20 Q Is that correct?
12	A	Okay.	21	22 A Correct. The address is 165 West Clark, of the building.
13	Q	Have you seen Exhibit 2 before?	23	24 Q Does the freight terminal building have an address?
14			25	22 A It did, I think, originally. And it was, I think, maybe 133 West Clark.
15			23	24 Q Okay. And you said this is in downtown Stevens Point?

		37		39	
1	A	Yeah. I guess that's open for interpretation, too.	1	A	Quitclaim deed.
2	Q	How many -- how many acres in total do you own on West Clark Street?	2	Q	Quitclaim deed?
3	A	5.083 is what I believe the survey shows.	3	A	From the railroad -- from -- I bought it from the railroad, but it was handled by some firm they used in Chicago.
4	Q	I want to quickly walk through each of the parcels, their purchase dates and purchase prices, just so that I know I have the accurate information. Okay?	4	Q	Would the quitclaim deed have the sale price on there?
5	A	I'll start with what's marked on Exhibit 2 as parcel number 1. It states that you acquired it on August 14, 1998, correct?	5	A	It should have, I would guess.
6	Q	Correct.	6	Q	Okay. Any reason to think that, assuming that's the case, that that sale price is inaccurate?
7	A	And is that the correct date?	7	A	It's very close. It's 7,300 or 7,500 or in there somewhere.
8	Q	I believe it is.	8	Q	Well, let me put it this way. I'm not trying to -- this isn't a point of disagreement. I just want to make sure
9	A	And you purchased -- the purchase price for lot number 1 was \$80,500.00, correct?	9	A	that the amount -- assuming the amount is listed on the quitclaim deed, is it fair to say that that's how much you paid for
10	Q	Correct.	10	A	lot number 3?
11	A	Moving on to parcel number 2, Exhibit 2 notes that you acquired it March 26,	11	A	I would hope so.
12	Q	1999, correct?	12	Q	That's fine.
13	A	Correct.	13	A	I've got canceled checks, too, that I can get back to.
14	Q	And as far as you know, is that an accurate date?	14	Q	That's fine. If that becomes necessary
		38		40	
1	A	Correct.	1	A	I'll ask you about it.
2	Q	And the purchase price for lot number 2 was \$80,000.00 even, correct?	2	A	Okay.
3	A	Correct.	3	Q	Moving on to lot number 4 on Exhibit 2, Exhibit 2 states that you acquired it on
4	Q	Moving on to lot number 3, Exhibit 2 indicates that you acquired it on August 20, 1999, correct?	4	A	February 22, 2000. Is that correct?
5	A	Correct.	5	Q	That's correct.
6	Q	Is there any reason to think that the actual purchase date was some time in October of 1999, to your recollection?	6	A	And as far as you know, that is, in fact, the date you acquired lot number 4?
7	A	I -- I can't say one way or another.	7	Q	As far as I know.
8	Q	I -- I thought this was correct. But --	8	A	The purchase price was \$47,700.00,
9	A	Okay.	9	Q	correct, for lot number 4?
10	Q	I'd have to check that.	10	A	I think that's correct.
11	A	For these purposes that's fine. And the purchase price of lot number 3 was \$7,300.00, correct?	11	Q	I see lot number 4 abuts West Clark
12	Q	I'm not exactly sure on that either. It was in that range. Might have been 7,500. I can't remember for sure on that right now.	12	A	Street directly. Are there any buildings on lot number 4?
13	A	Is there a -- how is the purchase documented? Strike that. How did you acquire the property, lot number 3?	13	Q	Not anymore.
14	Q		14	A	Moving on to lot number 5, Exhibit 2
15	A		15	Q	states that you purchased lot number 5 on
16	Q		16	A	December 21, 2001, correct?
17	A		17	Q	Correct.
18	Q		18	A	As far as you know, is that the date of
19	A		19	Q	the purchase?
20	Q		20	A	Right.
21	A		21	Q	And the purchase price for lot number 5
22	Q		22	A	was \$100,000.00, correct?
23	A		23	Q	
24	Q		24	A	
25	A		25	Q	

		41		43
1	A	Correct.	1	of land to satisfy their requirements of
2	Q	So in total you made five purchases over	2	FERC to provide public access. They may
3		approximately 40 months?	3	need that. I don't know.
4	A	Correct.	4	Just to be clear, they have never told
5	Q	And in total you spent approximately	5	you they need your land other than parcel
6		\$315,000.00 on those five parcels, right?	6	B?
7	A	Approximately, right.	7	They've told me they need all the other
8	Q	Now, other than -- I'm going to pull	8	land they ever had, even the land they
9		Exhibit 1 in front of you. Other than	9	sold.
10		parcel B on page 4 of Exhibit 1, you	10	Just not the upland property?
11		understand that CWPCo's position is that	11	Uh-huh.
12		none of this other land that you claim	12	Yes? They've never represented to you
13		ownership to is necessary to the	13	that they have needed anything that you
14		operation of the Stevens Point Hydropower	14	own other than parcel B?
15		Project. Do you understand that to be	15	Right.
16		their position?	16	Okay. What do you currently use the
17	A	It may be their position.	17	upland property for?
18	Q	Do you understand that to be their	18	I have a few things stored in the
19		position?	19	buildings. But I'm not -- you know, I
20	A	At this point, yes.	20	don't need to be using it at all. It's
21	Q	Okay. Do you agree?	21	just there so I do use it.
22	A	Do I agree --	22	Does Moodie, Incorporated make any use of
23	Q	Do you agree that, looking at Exhibit 2,	23	the upland property?
24		lots 2, 3, 4 or 5 are not necessary to	24	No.
25		the operation of the Stevens Point	25	The stuff you store in the buildings, is
		42		44
1		Hydropower Project?	1	it your personal items?
2	A	No. I won't make that assumption, no.	2	Yes. And a friend of mine stores a few
3	Q	So you don't agree?	3	things there, too.
4	A	I don't have an opinion right now one way	4	Do you ever use the property for
5		or the other.	5	recreation?
6	Q	What do you mean by that?	6	No.
7	A	In dealing with CWPCo, they have always	7	Have you ever leased any portion of the
8		stated that they need lots of land to	8	upland property?
9		satisfy the need to provide access and	9	I've rented out some space in the freight
10		recreation, whatever, to the public. And	10	terminal right now.
11		they may need that. I don't know.	11	Storage space?
12	Q	They may need your upland property to	12	Storage space, yes.
13		accomplish that stated goal, correct?	13	Who do you rent it out to?
14	A	Right. Well, it's the requirement by	14	You want the name or --
15		FERC, as I understand, that they provide	15	Sure.
16		land for the public.	16	Mark Sprede. He's a contractor. He just
17	Q	All right. Are there any specific	17	stores some building materials or tools
18		reasons that they would need your upland	18	there, some things.
19		property -- and by that, I'm referring to	19	How much do you charge him?
20		everything you own except parcel B -- to	20	He's paying \$50.00 a month.
21		accomplish that purpose? Is there any	21	Do you lease any portion of the property
22		specific reason why you think that would	22	to anybody other than Mr. Sprede?
23		be the case?	23	No.
24	A	That's what they've always told me	24	Have you ever?
25		throughout the years, that they need lots	25	No. Well, he works with somebody -- a

45	47
<p>1 company called Precision Glass. And the 2 two of them together have used it. I 3 don't know. It's the same -- you know, 4 they're in the glass business.</p> <p>5 Mr. Spreda puts in windows, commercial 6 windows in hospitals and things.</p> <p>7 Q But the only thing you have ever leased 8 to him is storage space in the freight 9 building, right?</p> <p>10 A Right. Well, there was a building on 11 number 2 which is gone now. They were 12 using that, and now they moved the stuff 13 to the freight --</p> <p>14 Q Okay. Okay. Can you show me on Exhibit 15 2 where the building that used to be on 16 lot number 2 was located?</p> <p>17 A It was right behind the parcel 4.</p> <p>18 Q Okay.</p> <p>19 A Right here (indicating).</p> <p>20 Q And what was there? Like a house?</p> <p>21 A No. It was a metal building.</p> <p>22 Q Did it have a foundation?</p> <p>23 A Yeah. Well, no. It had a slab.</p> <p>24 Q Okay.</p> <p>25 A It's a steel building sitting on a slab.</p>	<p>1 property? 2 A No. 3 Q Can you show me where on Exhibit 2 the 4 underground storage tank was located? 5 A It was probably about right there 6 (indicating). 7 Q Right about the D on acquired in lot 2? 8 A Right. 9 Q Did you sue the seller? 10 A No. 11 Q Did you get the seller to help you pay 12 for it? 13 A No. 14 Q Did anyone help you pay for it? 15 A It qualified for the PEPFA clean-up fund 16 because it was used to dispense gasoline. 17 Q Did you have to pay any money out of your 18 pocket? 19 A 7,500. 20 Q That's in total for the remediation 21 efforts? 22 A Right. 23 Q What did you have to pay for 24 specifically? 25 A I think that was the -- I think the total</p>
46	48
<p>1 Q Is the slab still there?</p> <p>2 A Slab is still there.</p> <p>3 Q When did you demolish that?</p> <p>4 A I started last -- late last fall.</p> <p>5 Q It's gone now completely?</p> <p>6 A It's gone now, yeah.</p> <p>7 Q So you never leased any of the vacant 8 land on the upland property to anybody?</p> <p>9 A No.</p> <p>10 Q You undertook remediation efforts on the 11 upland property after you purchased it, 12 right?</p> <p>13 A Right.</p> <p>14 Q Can you describe what you did?</p> <p>15 A I discovered an underground storage tank. 16 I think it was 500 gallons. Determined 17 it was used for gasoline and had once had 18 a dispenser on it. And I had the fire 19 department come. We dug it up and had an 20 engineering company work with me to test 21 all the soil, clean it up. We ended up 22 hauling contaminated soil out and got 23 closure from the DNR.</p> <p>24 Q Did you know that the underground storage 25 tank was there when you bought the</p>	<p>1 cost must have been 50 or 60 thousand. 2 But the way I understood it at the time 3 that I had to pay the first 7,500, and 4 PEPFA paid the rest, is the way I 5 understand it. 6 Q Did you have to do any other remediation 7 work on any portion of the upland 8 property? 9 A No. That was all done before I bought 10 it. And there was some gravel in this 11 area that I think had some diesel fuel or 12 something in it. But that was closed 13 before I bought it so -- 14 Q And for the record, you just referred to 15 an area on lot number 1 between the 16 number 1 as indicated on the drawing and 17 the border with lot number 2, correct? 18 A Right. As far as I understand, that's 19 the way it was, yeah. 20 Q But after you -- at the time you 21 purchased it, the gravel was gone and the 22 diesel fuel was cleaned up? 23 A And I had closure from the DNR before I 24 bought it. 25 Q Okay.</p>

	49		51	
1	A	The seller provided it.	1	wondering what you use it for.
2	Q	What other changes did you make to the upland property after you purchased it?	2	A I'm not using it for anything right now.
3			3	It's part of the property. This -- all
4	A	Shortly after I bought the first couple parcels, Clark Street, which is Highway	4	this land is -- is an investment. That's
5		10 at the time, was redone, and the	5	what it is. It's an investment. That's
6		bridge was rebuilt crossing the river.	6	what I use it for.
7		And while they had the road tore up, I	7	Okay. So you don't, like, fish off the
8		requested that they put in oversized	8	dike?
9		water mains and sewer lateral into the	9	A I don't fish.
10		property so if we put condominiums or	10	Q You don't put canoes in off the dike?
11		some other development in there we had	11	A I don't do any boating. I don't have
12		services already into the property. And	12	time.
13		I think that was, like, \$5,000.00,	13	Q Have you used the property for
14		something like that.	14	anything -- I'm sorry. Have you used
15		\$5,000.00 for sewer and water lines?	15	parcel B for anything since you bought
16	Q	Yeah. The lateral -- the oversized	16	it?
17	A	laterals. Now, where the lots previously	17	A No. It's just an investment.
18		existed, they -- they replaced those with	18	Q What actions -- now, obviously, there is
19		a standard --	19	a -- an earthen dike and a drainage ditch
20			20	on parcel B, correct?
21	Q	Just don't mark on it.	21	A Correct.
22	A	I'm sorry.	22	Q What actions have you taken to maintain
23	Q	That's okay.	23	the integrity of the dike and the ditch?
24	A	-- with a standard three-quarter-inch	24	A I reinforced the water side of the dike
25		copper and four-inch sewer lateral. So	25	with riprap that was out into the river.
	50		52	
1		those were replaced at no cost because	1	I brought it back up and built up the
2		they were standard. But the oversized I	2	riprap.
3		had to pay for, and the sewer drains to	3	Q And you contend that you did that over
4		the west. So the lowest point that I	4	the course of a couple of days in August
5		could hook onto was here (indicating)	5	of 2008?
6		where the number 14 is.	6	A Correct.
7	Q	Okay.	7	Q And just to be clear, the water had been
8	A	So that's where the oversized sewer and	8	drawn down, and you used the opportunity
9		water laterals are.	9	to take stones from the river bed and put
10	Q	Since you just referenced that area of	10	them on the embankment, correct?
11		the drawing, what is this kind of	11	A Against the embankment.
12		rectangular-shaped lot, I guess, for lack	12	Q Against the embankment?
13		of a better word, with 59 -- it's labeled	13	A Correct.
14		as having 59 feet of street frontage?	14	Q And this is the only time that you ever
15	A	There's a house there.	15	did that work, right?
16	Q	Is it occupied?	16	A Correct.
17	A	Yes.	17	Q How many rocks do you think you moved?
18	Q	Referring to parcel B on Exhibit -- page	18	A I hate to guess.
19		4 of Exhibit 1, what do you use parcel B	19	Q Ten?
20		for?	20	A Ten? No.
21	A	River access.	21	Q More?
22	Q	And what do you mean by river access?	22	A Oh, I bet you a thousand.
23		Just with a boat?	23	Q 1,000?
24	A	No. Water frontage is nice to have.	24	A Probably. It's 300 feet.
25	Q	Well, I certainly agree. I'm just	25	Q So on this occasion in August of 2008,

	53		55
1	you moved -- you reinforced the riprap on	1	condominium complex on the upland
2	the earthen embankment all up and down	2	property, right?
3	parcel B, correct?	3	A Me personally build it? Not necessarily.
4	A Correct. I didn't count how many rocks I	4	Q I'm not thinking you're out there with
5	moved.	5	bricks and mortar, but I'm thinking you
6	Q That's fine. You can just give me an	6	would have contracted with a developer to
7	estimate.	7	build a condominium complex, right?
8	A Well, you can see by the pictures how	8	A Not necessarily.
9	many rocks I moved.	9	Q What were your development intentions?
10	Q Since you bought parcel B, did you ever	10	A To either do it myself or sell it to
11	clear vegetation from it?	11	somebody that wanted to do it.
12	A No.	12	Q So you never had a set plan for what you
13	Q Did you ever spread gravel or granite or	13	thought was going to be built on the
14	other stones on the trail?	14	upland property, correct?
15	A I did not, no.	15	A I knew it was a wonderful place for
16	Q Did you ever monitor the dike or ditch	16	condominiums because of what was
17	for stability?	17	happening in other cities at the time.
18	A I've walked it and looked for seepage and	18	Condominium complexes in the downtown
19	things, yes.	19	area where you are within walking
20	Q Did you ever find any seepage?	20	distance and all kinds of stores and
21	A No.	21	things, that was popular in the early
22	Q Did you ever find any erosion?	22	2000s and even beyond that so --
23	A No. Well, when I put the rocks against	23	Q Is it popular anymore?
24	the earth I did find holes on the other	24	A Pardon me?
25	side. And I did plug those with rocks,	25	Q Is it popular anymore?
	54		56
1	too.	1	A I don't think so.
2	Q On the other side -- sorry.	2	Q Are condos popular anymore?
3	A On the upland side of the dike.	3	A I don't know. In 2007, as you know, I
4	Q Meaning on the slope leading down into	4	contracted with someone to promote it
5	the ditch, correct?	5	because I could see the end coming. And
6	A Right.	6	I thought we'd try and get somebody else
7	Q When you say holes, what kind of holes	7	in there that could move faster than me.
8	did you find?	8	That's J.L. Fischer, Inc.?
9	A I don't know. Two-, three-, four-inch	9	A Yeah.
10	holes. I just dropped rocks in it. They	10	Q You engaged J.L. Fischer, Inc. to find a
11	might have been animal holes or	11	developer to help you develop your land,
12	something. But there wasn't that many.	12	right?
13	Q How many times did you do that, drop	13	A No. To find somebody that would buy the
14	rocks into holes?	14	property and develop it themselves was
15	A I did it one time. And I'm not sure how	15	what I was primarily interested in.
16	many holes I did. Probably five, six	16	Q So is J.L. Fischer, Inc. a broker of
17	holes, something like that.	17	commercial real estate?
18	Q You intend to develop the upland	18	A He had a lot of connections with
19	property, correct?	19	developers.
20	A Not necessarily.	20	Q So would he have -- would J.L. Fischer,
21	Q What do you mean by that?	21	Inc. have acted as broker for the
22	A I'm -- it was a speculation. If anybody	22	property?
23	else wants to develop, I'd be more than	23	A I suppose you could call him that, yeah.
24	willing to sell it.	24	Q What would you call him? Doesn't matter
25	Q At one time your intention was to build a	25	what I would call him.

		57		59
1	A	I don't know how you define a broker, I 2 guess, is what I don't want to commit to. 3 You know, is that somebody that works on 4 percentage? What's a broker?	1	A Not as a part of that. I paid him 2 \$250.00 for a meeting that he set up one 3 time.
5	Q	Fair enough. What exactly did you want 6 J.L. Fischer, Inc. to do with respect to 7 the property?	4	Q Related -- was the meeting related to the 5 property? 6
8	A	For a set fee he was going to promote it 9 to up to 30 people that had done projects 10 in Illinois and Wisconsin. And it may 11 have worked. It may not have worked, you 12 know, so -- but I had to stop him from --	7	Q Indirectly, yeah. 8
13	Q	Would he -- would he have negotiated the 14 sale, or would you have done that 15 directly?	9	A Can you just describe what -- 10
16	A	He would have brought me interested 17 parties, and we would have worked 18 together.	11	Q It was with a law firm. 12
19	Q	So J.L. Fischer, Inc. was retained to 20 market the property, correct?	13	Q Okay. 14
21	A	Correct.	15	A Discussing this -- 16
22	Q	And basically act as deal maker, correct?	17	Q This dispute? 18
23	A	Correct, I suppose, yeah.	19	A This situation, right. 20
24	Q	Yeah. But then -- but he was -- strike 25 that. J.L. Fischer, Inc. was to receive	21	Q And you never signed a contract to 22
			23	develop the land, correct? 24
			25	A To develop it, no. (Moodie Exhibit No. 3 marked for identification.) EXAMINATION
		58		60
1		a fixed fee regardless of whether the 2 sale -- a sale occurred?	1	Q Can you tell me what it is?
3	A	Correct.	2	A It's a permit from the DNR to fill the 3 property, bring it out of the flood plain.
4	Q	Was J.L. Fischer then to act as your 5 agent in negotiations?	4	Q You say it's a permit. To me it just 5 looks like a cover letter to a permit; is 6 that correct?
6	A	No.	7	A Yes.
7	Q	You would have handled that directly, 8 right?	8	Q Okay. I'll represent to you that I took 9 this page out of your summary judgment --
9	A	Right.	10	A Okay.
10	Q	Okay. Did J.L. Fischer, Inc. locate any 11 interested developers?	11	Q -- exhibits.
12	A	I stopped him before he could get going.	12	A Okay.
13	Q	How long did he work to do that? He, 14 meaning J.L. Fischer, Inc.	13	Q Do you recall including this with your 14 summary judgment exhibits?
15	A	He didn't work at all because I just 16 returned a contract to him when I 17 received the letter from CWPCo telling me 18 that they would oppose any sale or 19 development of my property. So at that 20 point I didn't know what I had to sell. 21 And I couldn't -- how could I promote the 22 land when I didn't know what I was 23 selling. Nobody was knowing what they 24 were buying so --	15	A Yes.
25	Q	Did you pay J.L. Fischer, Inc. anything?	16	Q Now, your application to the DNR -- 17 strike that. What specifically were you 18 asking the DNR for permission to do? 19
			20	A To bring the property out of the flood 21 plain.
			22	Q And by the property, you're referring 23 just to the upland property, correct?
			24	A Right.
			25	Q What do you mean by bring the property

	61		63
1	out of the flood plain?	1	This meaning the lawsuit?
2	A Well, the property -- parts of the	2	Right.
3	property was classified as being in the	3	Switching gears a little bit, you stated
4	hundred-year flood plain. And the DNR	4	in your summary judgment brief that the
5	granted me permission to bring enough	5	City of Stevens Point is, and I'm
6	fill in there that it would not be in the	6	quoting, eager to rezone, end quote, the
7	flood plain anymore.	7	upland property, including parcel B.
8	Q In other words, you're going to raise the	8	Right.
9	level of the ground, correct?	9	Do you recall saying that?
10	A I have permission to, yes.	10	Yes.
11	Q Have you done that?	11	What do you mean by that, that they're
12	A No.	12	eager to rezone?
13	Q And the DNR issued you a permit to	13	Well, we had at the time a community
14	perform that work?	14	development person, whatever the title
15	A Right.	15	was. Name was John Gardner. And they
16	Q The permit the DNR issued you did not	16	were eager, as any city is, to get
17	grant you the right to grade any portion	17	properties cleaned up and, you know,
18	of parcel B, correct?	18	buildings on to raise their tax base.
19	A Right. We didn't ask to.	19	What time frame are we talking about
20	Q Okay. And as we sit here today, that's	20	here?
21	not part of the grading project?	21	For what? When did he say that?
22	A No.	22	Yes.
23	Q Correct?	23	He's been gone probably two years. So it
24	A No.	24	was ever since I brought it up till two
25	Q Getting back to Exhibit 3, looking at the	25	years ago or whenever he left. I haven't
	62		64
1	second full paragraph --	1	talked to his replacement. I'm not even
2	A Okay.	2	sure they have one anymore.
3	Q -- I'm attaching a copy of your permit	3	The property is zoned industrial,
4	which lists the conditions which must be	4	correct?
5	followed. A copy of the permit must be	5	Correct.
6	posted for reference at the project site.	6	And what do you think the City wants to
7	Please read your permit conditions	7	rezone it as?
8	carefully so that you are fully aware of	8	Well, they would love to have
9	what is expected of you.	9	condominiums there or businesses, you
10	A Right.	10	know, office-type businesses. You know,
11	Q I read that correctly?	11	it could be a nursing home. It could be
12	A Right.	12	condominiums or, you know, lawyers
13	Q What conditions were included in the	13	offices.
14	permit?	14	God forbid, right?
15	A I have to put the erosion fence, the silt	15	Huh?
16	fence, around the perimeter. You have to	16	God forbid, right?
17	inspect it once a week or something like	17	Well, as long as the courthouse is
18	that, make sure the fence isn't breached,	18	uptown, you know, it's a good spot. That
19	those kinds of conditions.	19	might be changing, too. They're talking
20	Q Are there any conditions in the permit	20	about building a new courthouse so --
21	with respect to parcel B?	21	Well, have you ever applied for a
22	A No.	22	rezoning permit?
23	Q Do you intend to start the fill work any	23	No.
24	time soon?	24	Has anyone?
25	A Not until this is resolved.	25	No.

	65		67
1	Q	For the this property, I mean.	1 think is relevant?
2	A	No.	2 A I can't think of anything right now.
3	Q	Other than what we've talked about	3 MR. LEE: Okay. Why don't we
4		just --	4 take a break for five minutes?
5	A	I don't want to commit to any zoning	5 THE WITNESS: Sure.
6		until I know, you know, what the future	6 (At this time, a brief recess
7		buyer wants to do with it.	7 was taken.)
8	Q	Understandable.	8 EXAMINATION
9	A	Yeah.	9 BY MR. LEE:
10	Q	Is there anything else about your past,	10 Q Setting aside the issue of adverse
11		present or future use of the property,	11 possession, okay, do you understand that
12		including parcel B, that you think is	12 the purpose of this legal proceeding is
13		relevant to the issues in this lawsuit?	13 to determine the amount of just
14		I'm specifically discussing your use of	14 compensation that you will be awarded for
15		the property.	15 CWPCo's taking of parcel B?
16	A	I'm not sure I understand the question.	16 A Correct.
17	Q	Sure. I mean, we've talked about --	17 Q And do you understand that the award that
18		we've talked about the condition the	18 you're going to get is referred to as
19		property was in when you bought it, all	19 just compensation?
20		the steps you took to clean it up and	20 A Right.
21		make it presentable for developers.	21 Q What do you think you should receive in
22		We've talked about the stones you placed	22 just compensation for parcel B?
23		against the embankment down by the river.	23 A I have no idea. And I don't think I need
24		And we've talked about your intentions to	24 to come up with an answer. I think CWPCo
25		raise the upland property out of the	25 should buy the whole thing and sell what
	66		68
1		flood zone, right?	1 they don't want. I don't think I should
2	A	Right.	2 have to take the risk of finding out
3	Q	Is there anything -- and we've talked	3 later how much I lost.
4		about some other issues, too. But is	4 Q How much do you think CWPCo should pay
5		there anything that we haven't talked	5 for the entire 5.083 acres?
6		about that you think is relevant that you	6 A Well, I went through what I've got in it,
7		intend to present evidence on at trial	7 year by year and added a return of six
8		related to your use of any portion of the	8 percent. And it comes up close to a
9		land you own?	9 million dollars just to recover what I've
10	A	The exclusive use of the water frontage	10 got in there and a reasonable return on
11		to any project, I think, is very	11 my investment. That's the bare minimum
12		important.	12 it should be.
13	Q	The exclusive use of water frontage to	13 Q When you say the amount you've got in it,
14		any project is important. What do you	14 what are you referring to?
15		mean by that?	15 A What I paid for it, what I paid for
16	A	Anything that is used -- might go on the	16 taxes, what I paid for clean-up, all the
17		property, the exclusive use of the water	17 years I've plowed snow, mowed the lawns.
18		frontage to that project could be very	18 Q You testified earlier that the five -- in
19		important.	19 the five purchases of the five lots, you
20	Q	When you say exclusive use -- strike	20 spent approximately \$315,000.00, correct?
21		that. Important to what? To the	21 A Correct.
22		valuation?	22 Q How much have you paid in taxes on that
23	A	To the valuation, to the users, the	23 land since you acquired it? I don't need
24		future users.	24 an exact number just --
25	Q	Okay. Anything -- anything else that you	25 A Well, the first couple years I think the

	69		71
1	taxes were around 3,000 or so. But	1	you spent -- since you first acquired the
2	they're up over 5 now. How many years	2	first parcel you've spent maybe
3	has it been? 12 or 13 years. I'd say	3	\$25,000.00 on clean-up costs. Do you
4	the average of four or five thousand	4	think that's right?
5	dollars a year so --	5	A That's probably a little high.
6	Q So let's say it's an average of 5,000 a	6	Q 20,000?
7	year.	7	A You're talking about removing the houses
8	A We're probably over 50,000. They're over	8	and everything?
9	five now. They've been five for quite a	9	Q I'm including removing the houses.
10	few years.	10	A Yeah. Probably.
11	Q And then for clean-up you said you paid	11	Q 20,000?
12	7,500 in -- for the remediation and 5,000	12	A Probably.
13	to install oversized lateral sewer lines?	13	Q In any event, all of the costs are
14	A Right. I have --	14	included in the exhibits in your summary
15	Q And anything else?	15	judgment filing, correct?
16	A I have taken down two houses that had	16	A I believe they are, right.
17	asbestos in them. Those were five or six	17	Q Okay.
18	thousand apiece to get those handled.	18	A Not -- now, I paid -- the one building's
19	Q Did you contract with somebody to --	19	got water in it. I paid quarterly water
20	A Yes.	20	bills on that. I've paid for heat in it
21	Q And they charged five or six thousand	21	to keep the water from freezing.
22	apiece?	22	That freight terminal, I better
23	A Right. One was over five. One was under	23	go back and talk about that freight
24	five. Then there was a separate company	24	terminal again. You asked about renters
25	they had come in to do asbestos removal.	25	before. There was power in there, and I
	70		72
1	That was 600 to 1,000, something like	1	was paying, like, \$10.00 a month average.
2	that.	2	And what I did, there is some
3	Back to the clean-up, the	3	lady from the university. She was an art
4	environmental people, seemed like to me,	4	teacher, wanted a place -- she had a
5	were stringing it out. And I asked them,	5	thing of doing -- welding up metal and
6	what can we do to end this? And they	6	doing sculptures. She was in there for
7	said, I suppose we could take the soil	7	years, and I didn't charge her anything.
8	out. So that's what we did.	8	Okay.
9	And I paid somebody to haul it	9	A But I did pay for the electricity while
10	over to the approved landfill in	10	she was back there. And then, like I
11	Wisconsin Rapids. So that was, you know,	11	said, I did the lawn mowing and shoveling
12	an extra 600 to 1,000 dollars to have	12	the sidewalks and keeping the back plowed
13	that done. I think that's all in here	13	out for years so --
14	(indicating).	14	Q So when you say that you think CWPCo
15	Q That's all in your summary judgment	15	should pay a million dollars to take the
16	submission?	16	whole property, you're factoring in the
17	A Pretty much, yeah.	17	expense -- the purchase price, all the
18	Q Okay.	18	expenses we talked about, including
19	A The documents are in there, landfill	19	taxes, clean-up, utilities and your own
20	costs and what they charged and	20	personal labor?
21	everything.	21	A Right.
22	Q So based on -- based on the description	22	Q Plus the six percent annual appreciation
23	I'm hearing from you. Obviously, we can	23	rate?
24	verify that in the summary judgment	24	A A return on investment, which I'm making
25	filings. It sounds like you're saying	25	that on other things. I'm making more

	73		75
1	than that on other investments so --	1	Waupaca.
2	Q What is your basis for the six number? I	2	I'm going to request that you produce
3	was about to ask you.	3	those to us.
4	A I have a lot of municipal bonds that are	4	Okay.
5	paying close to six percent state and	5	We can talk about that after the
6	federal tax exempt so --	6	deposition is over. Okay?
7	Q Do you have -- does your six percent	7	And to some extent CWPCo's own numbers
8	number factor in the real estate downturn	8	bear me out.
9	of the late part of the last decade?	9	When you say CWPCo's own numbers, what
10	A No.	10	are you referring to?
11	Q It does not?	11	They referred to a property that they
12	A Because I wanted to sell that in 2007 and	12	sold to the City and, you know, what they
13	was prohibited. That money would have	13	got for that land. I think --
14	been invested from that point on making	14	Are you referring to the 2003 --
15	six percent.	15	Yeah.
16	Q Okay. So your -- okay. How much do you	16	-- sale --
17	think the property was worth in 2007, the	17	Uh-huh.
18	whole property?	18	-- that was included in your summary
19	A From other things that were going on at	19	judgment filings?
20	that time, I'd say 1.5, 1.6 maybe even.	20	I think so.
21	There again, that process was short	21	Assuming that CWPCo only condemns parcel
22	circuited -- we would have found out if	22	B, how much do you think you should
23	we could have gone ahead with that	23	receive in just compensation?
24	contract. We'd have found out what it	24	It's hard to say. I never intended to
25	was worth.	25	own four-and-a-half acres without water
	74		76
1	Q Well, before you entered into the	1	frontage. That was never my intention.
2	contract with J.L. Fischer, Inc., you had	2	What do you think parcel B on its own is
3	an idea of what you were -- what you	3	worth?
4	planned to sell the property for, right?	4	Well, I think I'd have to go to what
5	A Uh-huh.	5	waterfront property is going for by the
6	Q Yes?	6	foot.
7	A I was anxious to find out what somebody	7	Do you know that sitting here today?
8	was willing to pay, right.	8	It's all over the board. Green Lake it's
9	Q But my question was, did you have an idea	9	probably \$10,000.00 a foot. Lake
10	of what you thought the property was	10	Winnebago is maybe 2,000 a foot.
11	worth at the time?	11	I don't know. This is unique.
12	A Yeah.	12	I know it's not the best water frontage,
13	Q And that was 1.5 to 1.6 --	13	but it's the only water frontage around.
14	A In that area, yeah. I was willing to	14	You know, everything else is owned by the
15	look at anything because I could see that	15	City and its parks. So this is unique.
16	the market might be turning. So I was	16	So do you not have an opinion, sitting
17	anxious to get a number.	17	here today, as to how much you should get
18	Q In any event, you think the property is	18	paid for the taking of parcel B?
19	worth about a million now?	19	I think it should be at least \$2,000.00 a
20	A At least. You know, I think comparables	20	foot.
21	could come up with higher numbers. I've	21	And what do you base that on?
22	got some comparables that do show higher	22	Like I said, what waterfront property has
23	numbers.	23	been going for throughout the years
24	Q What comparables are those?	24	and --
25	A A development in Wausau, development in	25	You said in Lake Winnebago it's about

	77		79
1	\$2,000.00 a foot?	1	You don't have the water frontage. You
2	A Probably. I'm guessing. That's not the	2	don't have the privacy of a water
3	most desirable lake. Green Lake is --	3	frontage. Once Consolidated or CWPCo
4	you know, that's -- that's maybe the	4	gets it they have to let the public on.
5	highest. I don't know what Lake Geneva	5	They can't keep anybody out. That might
6	is going for.	6	be a big negative to a condominium
7	I know this isn't Lake Geneva,	7	complex where people want some privacy
8	and this isn't Green Lake. Green Lake	8	when they sit by the water.
9	had been at 10,000 a foot. But again	9	Q Are you contending that your upland
10	this is the only one around, too.	10	property has been physically damaged by
11	It's -- there just isn't any out there	11	CWPCo in any way?
12	so --	12	A Not yet.
13	Q How much value do you think the property	13	So no, not to this point?
14	as a whole will lose if CWPCo takes just	14	A Not to this point.
15	parcel B?	15	Q Well, are you afraid that CWPCo is going
16	A I'd say at least half. But I don't -- I	16	to cause damage to your property, not to
17	want to repeat, I don't want to find out.	17	the value of the property but physical
18	I don't think I have to find out. It	18	damage to the property?
19	shouldn't be my -- it shouldn't be my	19	A I don't know.
20	consequence.	20	Q Are you claiming any other form of
21	Q But you think -- this is an important	21	damages besides loss in value of the
22	point, so, you know, I need to ask you	22	property?
23	questions about it. You believe that	23	A Not now, no.
24	parcel B makes up -- strike that. You	24	Q Did you grow up in Portage County?
25	believe that the value of the property as	25	A No.
	78		80
1	a whole will be reduced by 50 percent if	1	Q Where did you grow up?
2	the property loses parcel B, correct?	2	A Ripon.
3	A It's a possibility. But --	3	Q What county is Ripon in?
4	Q I guess, what do you base the 50 percent	4	A Fond Du Lac.
5	number on?	5	Q How did you end up down in Stevens Point,
6	A There's four acres downtown Stevens Point	6	in Portage County?
7	across from the mall, and I think the	7	A When I was going to college we did
8	City owns it. There again there's the	8	hauling for Green Giant in Ripon with
9	qualifier to what I'm saying. The City	9	small trucks, hauling peas and corn. Del
10	owns it.	10	Monte had a plant in Markesan. And at
11	I think they wanted to get	11	that time we were building a new plant in
12	400,000 for that. It was an old factory	12	Plover and wanted somebody to come up and
13	site that was contaminated. I don't know	13	haul green beans to the plant.
14	if it's been cleaned up. These cities	14	So we came up. That was how we
15	sell stuff cheap just to get development	15	made our college money. And then we just
16	on it, get tax base.	16	kind of stayed in the area. We got more
17	So, therefore, four acres for	17	authority, interstate commerce authority,
18	400,000, maybe -- mine is five acres,	18	to haul processed potatoes, French fries,
19	500,000. I don't know. Mine might be	19	hash browns, things like that. So we
20	cleaner than theirs so --	20	just evolved into a trucking business and
21	Q Getting specifically back to parcel B,	21	stayed here.
22	parcel B being 0.41 acres, whereas the	22	Q When did you first become aware of
23	entire property being 5.083 acres, why do	23	CWPCo's operation of the dam in the
24	you think that losing parcel B would have	24	Stevens Point reservoir?
25	the value of the full property?	25	A I don't know.

		81		83	
1	Q	It was before you bought the property?	1	Q	And you saw it when you came to look at the property before you bought it?
2	A	Yes.	2	A	Right.
3	Q	Was it years before you bought the property?	4	Q	And again the ditch extended through the property -- I'm sorry. The ditch extended beyond the property in both directions, correct?
4			5	A	Right.
5	A	Probably.	6	Q	On top of the earthen dike, there's a walking trail, correct?
6	Q	Is it fair to say that CWPCo has been operating that dam since you moved to this area?	7	A	There is now.
7			8	Q	When you say there is now, what do you believe was there before the current walking trail?
8	A	Yes.	9	A	Just the top of the dike.
9	Q	Again you knew that before you bought the property, right?	10	Q	Okay. People could walk on top of the dike, correct?
10	A	Right.	11	A	I suppose they could.
11	Q	Okay. And are you aware that CWPCo controls the water level in the impoundment?	12	Q	It was kind of a natural walking trail, right?
12	A	Yes.	13	A	With gates on both ends. So I don't know how natural that makes it.
13	Q	And again you knew that before you bought the property, right?	14	Q	How would you describe what the top of the dike looked like when you first bought the property?
14	A	Yes.	15	A	
15	Q	Are you aware that the water level is mandated by FERC?	16	Q	
16	A	No.	17	A	
17	Q	In any event, you don't have any control over the water level as it abuts your property, right?	18	Q	
18	A		19	A	
19	Q		20	A	
20	A		21	Q	
21	Q		22	A	
22	A		23	Q	
23	Q		24	A	
24	A		25	Q	
25	A			A	
		82		84	
1	A	No.	1	A	It was gravel and grass.
2	Q	None of the landowners there do, do they?	2	Q	Gravel and grass. Not the fine red granite that's there now, right?
3	A	Not that I know of.	3	A	No.
4	Q	Did you come look at the property before you bought it?	4	Q	Okay. When you came to look at the property, the trail -- the gravel trail extended -- that was there at the time that you saw it -- strike that. This is, like, the worst question I've ever asked in my life. Start over.
5	A	Yes.	5	Q	When you came to look at the property and you saw the gravel on top of the dike, that extended beyond the property in both directions, correct?
6	Q	And when you came to the property, did you walk down by the water?	6	A	In one form or another, yes.
7	A	Yes.	7	Q	Okay. Now, you contend in your summary judgment submissions that at the time you purchased the property there was, I'm quoting, no indication that CWPCo was doing maintenance, end quote, of any kind on the property, correct?
8	Q	The dike, the earthen dike, was located and ran across the property you were looking at when you came to look at it, right?	8	A	Correct.
9	A	Yes.	9	Q	What do you mean by that, there was no indication?
10	Q	The dike, the earthen dike, was located and ran across the property you were looking at when you came to look at it, right?	10	A	The realtor that sold me the property
11	A	Yes.	11	Q	
12	Q	And the dike extended beyond the property in both directions, correct?	12	A	
13	A	Right.	13	Q	
14	Q	Referring to the drainage ditch on the property, that was located on the property at the time you purchased it, correct?	14	A	
15	A	Right.	15	Q	
16	Q		16	A	
17	A		17	Q	
18	Q		18	A	
19	A		19	Q	
20	Q		20	A	
21	A		21	Q	
22	Q		22	A	
23	A		23	Q	
24	Q		24	A	
25	A		25	Q	

<p>1 says that the physical features of that 2 section of the dike was different than 3 the other section, different colors of 4 granite. He said that it was visible to 5 him that CWPCo had done something right 6 up to the property line and quit and 7 started again at the other end of the 8 property line.</p> <p>9 Q When did he tell you that? 10 A He's always told me that.</p> <p>11 Q Did he tell you that before you bought 12 the property?</p> <p>13 A No. I don't think so.</p> <p>14 Q So he first told you after you bought the 15 property?</p> <p>16 A Right.</p> <p>17 Q Was it once this dispute became evident?</p> <p>18 A Yeah.</p> <p>19 Q So would you say 2007, 2008?</p> <p>20 A Probably, yeah.</p> <p>21 Q Who was the -- who was the listing agent 22 for the property?</p> <p>23 A I think it was Chris Northwood.</p> <p>24 Q Did you use a buyer's agent when you 25 bought the property?</p>	<p>85</p> <p>1 see -- you know -- 2 Q You didn't go up to the edge of the dike 3 and look to see if there was 4 reinforcement? 5 A I didn't get in the water and feel around 6 to see what was there, no. 7 Q Could you see rocks on the downslope into 8 the water? 9 A A little. 10 Q Setting aside what Mr. Northwood said, do 11 you recall at the time that you inspected 12 the property before you purchased it 13 whether the top of the dike on the 14 portion of property you were looking at 15 was different from the portion of the 16 dike on either side? 17 A Once he mentioned it I thought, yeah, 18 it's -- I think he's right. But I'm not 19 going to swear to it. You know, he kind 20 of refreshed my memory a little bit. I 21 didn't think of it until he mentioned it. 22 And then I thought, well, yeah, I think 23 he's right. That's true. But I'm not 24 going to swear to it. 25 Q Okay. Since you are under oath, is it</p>
<p>1 A I think I went through another realtor. 2 I'm not sure on that. I think it was 3 Butch West. He's since deceased.</p> <p>4 Q Did Mr. West have any -- or express any 5 opinion on whether the appearance of the 6 dike looked different on the section of 7 the property that you were --</p> <p>8 A No.</p> <p>9 Q -- purchasing?</p> <p>10 A No. I don't know if he even went up 11 there and looked at it.</p> <p>12 Q When you -- when you came to view the 13 property before you purchased it, was the 14 dike or the ditch on the property in a 15 state of disrepair?</p> <p>16 A Not that I can remember.</p> <p>17 Q Was there any erosion or sloughing on the 18 ditch or dike when you came to look at it 19 before you bought it?</p> <p>20 A I don't recall.</p> <p>21 Q Was there any overgrowth of vegetation?</p> <p>22 A No, that I recall.</p> <p>23 Q Was there riprap located on the water 24 side of the embankment?</p> <p>25 A Well, there was water there. I couldn't</p>	<p>86</p> <p>1 fair to say that the answer to my 2 question is that you don't recall? 3 A Right.</p> <p>4 Q Okay. Fair enough. Who did you think 5 was -- who do you think was maintaining 6 that section of the dike?</p> <p>7 A I didn't know if anybody was maintaining 8 it. And it's maybe time we start 9 talking -- calling it what it really was. 10 It was a railroad spur. That's where -- 11 when I saw -- when I went there the first 12 time and saw gravel and everything else, 13 to me it was a railroad spur.</p> <p>14 Q Were there railroad ties sitting on top 15 of the dike?</p> <p>16 A No.</p> <p>17 Q Was it being used in connection with rail 18 transport in any way?</p> <p>19 A Not at that time.</p> <p>20 Q Is it your contention in this lawsuit 21 that since you bought the property CWPCo 22 has not performed inspections on the dike 23 as it crosses the property?</p> <p>24 A I don't know.</p> <p>25 Q Well, the reason I ask is because when --</p>

	89		91
1	CWPCo submitted a proposed finding of	1	does it because it's walking trail now.
2	fact that it has, and you disputed that	2	I don't know.
3	fact. And I'm asking you what the basis	3	Q Have you ever seen the City out there
4	for that dispute is.	4	doing it?
5	A Because I don't know if they did or not.	5	A No. I haven't seen anybody out there
6	They probably did maintenance or	6	doing it.
7	inspections or whatever on parts of the	7	Q Have you ever seen the City out there
8	dike. That particular 320 feet I don't	8	performing any maintenance on the dike at
9	know if they did or not. I don't know if	9	all?
10	they can prove that they did or not.	10	A No.
11	So --	11	Q Have you ever seen them performing any
12	Q Is it your contention that since you	12	maintenance on the ditch?
13	bought the property CWPCo has never	13	A I haven't seen anybody doing any
14	removed brush, weeds, trees or other	14	maintenance on the dike or ditch except
15	vegetation from the section of the dike	15	when they were trespassing two years ago.
16	that crosses your property?	16	Q I'm going to ask you about that in a
17	A I don't know.	17	minute.
18	Q Since you've purchased the property, have	18	A Okay.
19	you noticed that vegetation that had	19	Q Do you have any evidence to suggest that
20	grown on the dike had been removed?	20	CWPCo has not monitored the effects of
21	A I think they mowed it once or twice. I	21	weather conditions on the dike as it
22	don't know. In recent years they've done	22	crosses your property since the time you
23	a lot of things that they didn't do ten	23	purchased the property?
24	years ago.	24	A No.
25	Q Such as?	25	Q Have you ever seen any trees that fell
	90		92
1	A Mowing it.	1	across the dike or ditch as it crosses
2	Q So they never --	2	your property?
3	A I don't think they used to. I think it's	3	A I don't think so. I don't know. I've
4	something new they started in the last	4	seen some across the dike. I don't
5	few years. Even their own section I	5	remember if it was on my section or -- I
6	don't think they used to mow it like	6	mean across the ditch. I think what I
7	they're doing now.	7	saw was on their side, on their piece.
8	Q But you don't know that they didn't mow	8	What you saw -- the tree that you saw
9	it ten years ago?	9	laying across the dike, did CWPCo remove
10	A No. It looks a lot different now than it	10	it?
11	did ten years ago.	11	A I don't know.
12	Q Well --	12	Q It was removed, though, correct?
13	A It looks mowed now. It looks like	13	A I don't know that either. It might still
14	they're doing something. It didn't ten	14	be there. I don't know.
15	years ago, no. Not to me.	15	Q When was that?
16	Q What part of the -- what part of the dike	16	A A year or two ago.
17	needs to be mowed?	17	Q Okay. How often do you go out to the
18	A I don't know if any of it does. But	18	property?
19	they're doing a slope, inland slope.	19	A Are you talking about parcel B?
20	Q Slope going down to the ditch?	20	Q Parcel B.
21	A Right.	21	A Three, four times a year maybe.
22	Q Do they have riders or push mowers or --	22	Q Now, you know that CWPCo had submitted
23	A I've never seen them do it. I don't know	23	four declarations from current and former
24	what they're using. And I'm not even	24	employees testifying that CWPCo's done
25	sure they're doing it. Maybe the City	25	all these things regularly on parcel B

	93		95
1	since before 1951, correct?	1	not -- I'm not -- maybe the City built
2	A Correct.	2	it, because they're sure using it.
3	Q The question is, you know we have	3	Q Do you know whether the City of Stevens
4	submitted declarations?	4	Point is using it with CWPCo's
5	A Declarations, yes. Specifically, if	5	permission?
6	they're talking about parcel B I don't	6	A No.
7	know that for sure, no.	7	Q Have you ever seen the City of Stevens
8	Q Do you have any reason to think that	8	Point doing maintenance on the ditch?
9	those four declarants are not telling the	9	A I'm not -- I don't -- I don't -- early on
10	truth?	10	after I bought it, somebody did something
11	A About what?	11	there. And I -- I'm not going to -- I
12	Q That CWPCo has been performing	12	don't know who did. Seemed like it was
13	maintenance and all the things that we	13	dredged maybe. And I almost think the
14	just talked about on parcel B since	14	City did it. But I'm not saying -- I'm
15	before 1951.	15	not -- I don't know.
16	A I have no reason to believe them or not	16	Shortly after you bought the property,
17	believe them.	17	you noticed the ditch had been dredged?
18	Q Okay. Other than the document from	18	A I think so. Somewhere in that time
19	Mr. Northwood. In your response to	19	somebody did some clean-up in there. And
20	CWPCo's proposed finding of fact number	20	I don't know who did it.
21	49, you stated that the ditch that	21	Q Okay.
22	crosses the property is a, quote, City of	22	A During that time I did talk to the City,
23	Stevens Point Public Works structure, end	23	and they stressed to me how important
24	quote. Do you recall saying that?	24	that was to their park system. And their
25	A Yes.	25	drainage system was that culvert and that
	94		96
1	Q Did the City dig the ditch?	1	ditch.
2	A I don't know. I -- I don't think anybody	2	Q Okay.
3	did. I think it was there when they put	3	A I think they must have something to say
4	the railroad spur in. That's --	4	about it. And whether or not they're
5	Q Why do you think it's a City of Stevens	5	willing to come over there and clean it
6	Point Public Works structure?	6	out to their benefit, maybe they are. I
7	A North -- north of my property is a park,	7	don't know.
8	a City park, on the other side of Clark	8	Speaking specifically about CWPCo's use
9	Street. From there there's a drainage --	9	of parcel B, is there anything else about
10	from the park, that whole park drains	10	the way CWPCo uses or has used parcel B
11	into a culvert that goes under the	11	that you think is relevant to the present
12	highway and dumps into the ditch on the	12	dispute or that you intend to present
13	north side of the -- of the ditch. That	13	evidence of at trial?
14	water is coming through, and it empties	14	A No.
15	out on the south side.	15	Q Okay. Now, you contend that before you
16	So if you plug up that culvert	16	bought the property you had a meeting
17	the park is going to flood. So I'm	17	with Mark Anderson of CWPCo, correct?
18	guessing that the City is using it as a	18	A Uh-huh.
19	public -- you know, as a -- what do they	19	Q Yes?
20	call it?	20	A Yes.
21	Q Well, you refer to it as a public works	21	Q And you contend that that meeting took
22	structure?	22	place at CWPCo's offices in Rapids,
23	A Well, I believe it is. I don't know what	23	correct?
24	else you could call it. They're using	24	A I believe it did.
25	it. And I don't know who built it. I'm	25	Q And can you give me an approximate date

	97		99
1	for the meeting?	1	ditch on the property, correct?
2	A I think it was around July 22nd,	2	A Right.
3	somewhere in there.	3	Q Did you ask Mr. Anderson if CWPCo
4	Q Of 1998?	4	contended that it owned the property,
5	A Right. Yes.	5	that it owned that portion of the land,
6	Q And do you have -- strike that. Who else	6	parcel B?
7	was at the meeting, if anybody?	7	A I won't use those words because I don't
8	A I don't know if anybody else was.	8	remember exactly what I said.
9	Q It was just you and Mr. Anderson?	9	Q Well, you said you wanted to go clear up
10	A I believe so.	10	the ownership issues so --
11	Q Do you remember what time of day?	11	A I showed him the survey, showed him the
12	A I think it was early, 7:15 or 7:30 in the	12	survey, that they did not own it. And at
13	morning.	13	that point he could have said, yeah, we
14	Q Now, you further contend that at that	14	do. And I would have walked away. He
15	meeting you informed Mr. Anderson that	15	didn't. He didn't show any interest in
16	you were interested in buying the	16	the idea of it. They did not own it.
17	property and including parcel B, correct?	17	Q Do you recall what he said in response to
18	A Correct.	18	seeing the survey?
19	Q And it's also your contention that at	19	A No. No. He didn't say anything that
20	that meeting you asked Mr. Anderson if	20	would stop -- would have stopped me from
21	CWPCo had any interest in buying the	21	purchasing it. And that's why I went
22	property, correct?	22	there, to see if there was any problem.
23	A I don't know if I used those exact words	23	Q Well, I guess the question is then, what
24	or not.	24	did he say?
25	Q What words did you use?	25	A I don't know. Specifically? That's a
	98		100
1	A Well, I just informed them that that land	1	long time ago.
2	was for sale, including the dike and	2	Q Did you take any notes at that meeting?
3	water frontage, and I wanted to find out	3	A No.
4	if there was any ownership issues before	4	Q Do you still have a copy of the survey
5	I proceeded.	5	that you showed Mr. Anderson?
6	Q What specifically did you ask	6	A I believe so. Yeah.
7	Mr. Anderson about the ownership issues?	7	Q Probably ask you -- I'm going to ask you
8	A I don't know the exact words.	8	to produce that to me as well.
9	Q Well, that's fine --	9	A The exact same piece of paper?
10	A It was important to me at that time to	10	Q Or a copy of it.
11	find out if there was going to be any	11	A Okay.
12	trouble with me buying that property.	12	Q An identical copy, I guess. Again, we
13	Because I didn't want any trouble. I had	13	can talk about that after the --
14	other places I could go to invest. I	14	A I think it's in here.
15	didn't have to invest in that. The	15	Q Oh, you think it's in the summary
16	ownership issue was very important. I	16	judgment submissions?
17	wanted to make sure there was no	17	A Probably, yeah.
18	contentions over it.	18	Q Okay. We can talk about that off the
19	Q Well, why did you go to CWPCo in the	19	record, too.
20	first place? What --	20	MR. LEE: Let's go off the
21	A Because of the hydroelectric --	21	record.
22	Q Project?	22	(Discussion held off the
23	A -- project that they had there, yeah.	23	record.)
24	Q So you went to CWPCo because you knew	24	EXAMINATION
25	that CWPCo was using the dike and the	25	BY MR. LEE:

101	103
<p>1 Q I'm not going to mark this as an exhibit, 2 but I'm referring you to the last page of 3 Exhibit 501 from your summary judgment 4 submissions. And I'm showing it to you 5 now. Do you recognize this document?</p> <p>6 A Yes.</p> <p>7 Q Can you describe it for me?</p> <p>8 A It's the south portion of a survey of the 9 land that I purchased in 1998 --</p> <p>10 Q And --</p> <p>11 A -- with the water frontage.</p> <p>12 Q Is it your testimony that you showed this 13 piece of paper to Mr. Anderson at your 14 1998 meeting?</p> <p>15 A Either this one or a copy of it. I have 16 several of these in my file, so yeah.</p> <p>17 Q You showed him this certified --</p> <p>18 A Right.</p> <p>19 Q -- survey map?</p> <p>20 A Right.</p> <p>21 Q Okay. And when you presented the 22 certified survey map to him, did you 23 affirmatively state that you didn't think 24 CWPCo owned the property?</p> <p>25 A I said, this map shows that you do not</p>	<p>1 could buy the property if it wanted to? 2 A No. That's pretty -- it's on the market. 3 Anybody could have bought it. I didn't 4 need to tell him that.</p> <p>5 Q After you met with Mr. Anderson, did you 6 tell anybody about the substance of your 7 meeting with him?</p> <p>8 A No.</p> <p>9 Q Not your wife or anybody?</p> <p>10 A Not that I remember.</p> <p>11 Q How about Mr. Northwood?</p> <p>12 A The meeting confirmed everything I was 13 told. So I didn't need to discuss it 14 with anybody.</p> <p>15 Q Okay. You didn't discuss it with 16 Mr. West?</p> <p>17 A I don't think so. I don't remember.</p> <p>18 Q You stated in your reply to the notice of 19 condemnation that CWPCo informed you in a 20 letter that it was not interested in 21 purchasing the property. Do you recall 22 saying that?</p> <p>23 A No. Oh. I think that was in reply to 24 Carl Lemke's remarks.</p>
	(Moodie Exhibit No. 4 marked for
102	104
<p>1 own the water frontage. Is this a 2 problem?</p> <p>3 Q And he said in response?</p> <p>4 A I don't remember what he said. But he 5 did not put up any red flags or say, wait 6 a minute, we own that. He did nothing of 7 that nature. That's why I went to him, 8 because I did not want the same problem, 9 this very problem we're having now.</p> <p>10 Q Did he tell you in that meeting that 11 CWPCo operated the -- well, strike that. 12 Did he tell you in that meeting that 13 CWPCo used the dike and the ditch across 14 the property?</p> <p>15 A I don't believe he told me that. I don't 16 know. I don't remember his exact words.</p> <p>17 Q Was there any follow-up correspondence 18 between you and CWPCo about your meeting 19 with Mr. Anderson before you bought the 20 property?</p> <p>21 A No. Not that I can recall.</p> <p>22 Q When you met with Mr. Anderson, did you 23 tell him that the property was for sale?</p> <p>24 A Yes.</p> <p>25 Q Did you tell him that you thought CWPCo</p>	<p>1 identification.)</p> <p>2 THE WITNESS: He states that the 3 realtor contacted him. And at that time 4 they weren't interested in it. That's 5 what Karl Lemke said. I'm not going to 6 attest to anything other than that.</p> <p>7 EXAMINATION</p> <p>8 BY MR. LEE:</p> <p>9 Q Show you what's been marked Moodie 10 Exhibit No. 4. Do you recognize this 11 document?</p> <p>12 A Yes.</p> <p>13 Q Do you want to take a minute to review 14 it?</p> <p>15 A Okay.</p> <p>16 Q Can you tell me what the document is?</p> <p>17 A It's a letter to me dated May 22, 2007 18 written by Mark Anderson.</p> <p>19 Q In the first paragraph in the sixth line 20 down, the sentence beginning, I 21 contacted, do you see where I'm 22 referring?</p> <p>23 A Yes.</p> <p>24 Q It says, I contacted Carl Lemke to 25 inquire on his recollection of this</p>

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<p>1 parcel?</p> <p>2 A You're speaking of Mark Anderson saying</p> <p>3 this now?</p> <p>4 Q Correct. And he indicated that he was</p> <p>5 contacted by a realtor about the land</p> <p>6 behind the dike but was given no</p> <p>7 indication that this parcel included a</p> <p>8 portion of the dike. Did I read that</p> <p>9 correctly?</p> <p>10 A Correct.</p> <p>11 Q Is that what you were referring to when</p> <p>12 you said that CWPCo informed you in a</p> <p>13 letter it was not interested in</p> <p>14 purchasing the property?</p> <p>15 A Right.</p> <p>16 Q Okay. Are there any other meetings or</p> <p>17 interactions with CWPCo employees or</p> <p>18 representatives, besides the one with</p> <p>19 Mr. Anderson in 1998, that you think are</p> <p>20 relevant to the present dispute and which</p> <p>21 you intend to present evidence of at</p> <p>22 trial?</p> <p>23 A There's been a lot of contact between us.</p> <p>24 And I -- there may be some things I'll</p> <p>25 bring up at the trial. I haven't</p>	<p>1 THE WITNESS: Yes.</p> <p>2 EXAMINATION</p> <p>3 BY MR. LEE:</p> <p>4 Q Do you believe that that meeting or</p> <p>5 anything that was said there is relevant</p> <p>6 to this lawsuit?</p> <p>7 A I'm not exactly -- we had a couple</p> <p>8 meetings with Mr. Scharff. I'm not sure</p> <p>9 which one you're exactly referring to.</p> <p>10 Q Are there any meetings --</p> <p>11 A I know Doug Clark was at one of them.</p> <p>12 Was that the one you were talking about?</p> <p>13 Q I don't know. You tell me.</p> <p>14 A I don't know.</p> <p>15 Q I'm trying to --</p> <p>16 A I don't know the dates.</p> <p>17 Q I'm trying to identify conversations</p> <p>18 that -- in which CWPCo made</p> <p>19 representations that you think are</p> <p>20 relevant to the lawsuit.</p> <p>21 A There was a meeting with Mr. Scharff and</p> <p>22 Mr. Witt. I don't know the date. So I</p> <p>23 can't -- I can't answer exactly what --</p> <p>24 to what -- your question.</p> <p>25 Q Is that the last time you met with Mr.</p>
106	108
<p>1 outlined any of them yet. There's a lot</p> <p>2 of correspondence that will be brought</p> <p>3 up. As far as conversations, possibly.</p> <p>4 Q Can you tell me what conversations those</p> <p>5 are?</p> <p>6 A Throughout the years they have come to me</p> <p>7 with the idea of buying the water</p> <p>8 frontage from me. And those discussions</p> <p>9 might come up.</p> <p>10 Q How many times did they offer to buy the</p> <p>11 water frontage?</p> <p>12 A They didn't ever -- well, once they</p> <p>13 offered to buy it.</p> <p>14 Q Was that in July of '09?</p> <p>15 A Right. Previous to that they always</p> <p>16 wanted to trade, never purchase anything.</p> <p>17 Q I know you had a meeting with Mr. Witt</p> <p>18 and Mr. Scharff in August of 2009,</p> <p>19 correct?</p> <p>20 A Probably.</p> <p>21 Q And was that at CWPCo's office?</p> <p>22 A Uh-huh.</p> <p>23 (At this time, the court</p> <p>24 reporter admonished the witness</p> <p>25 to answer verbally.)</p>	<p>1 Witt and Mr. Scharff?</p> <p>2 A I'm not sure -- I know there was a last</p> <p>3 time, but I don't know what the date of</p> <p>4 that last time was.</p> <p>5 Q Don't worry about the date. If we talk</p> <p>6 about the last meeting, then that's fine.</p> <p>7 A The last one. Okay. Possibly.</p> <p>8 Q Possibly. What was said during that</p> <p>9 meeting?</p> <p>10 A I discussed their offer with them. And</p> <p>11 then I tried to discuss a counteroffer.</p> <p>12 A And he walked out of the room.</p> <p>13 Q Who walked out of the room?</p> <p>14 A Mr. Scharff.</p> <p>15 Q Did Mr. Witt stay in the room?</p> <p>16 A He did.</p> <p>17 Q Did you continue the discussion with him?</p> <p>18 A We had a few minutes, but nothing was</p> <p>19 accomplished. He didn't have authority</p> <p>20 to accomplish anything, that I could</p> <p>21 tell.</p> <p>22 Q Can you think of any other conversations</p> <p>23 you had with Mr. Witt that addressed the</p> <p>24 issues in this lawsuit?</p> <p>25 A Not any verbal conversations, no. I will</p>

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<p>1 probably be referring to all the 2 declarations that they submitted already.</p> <p>3 Q How about Mr. Scharff? Any conversations 4 with Mr. Scharff that are relevant to the 5 issues in this lawsuit?</p> <p>6 A I guess just his attitude.</p> <p>7 Q And describe that.</p> <p>8 A I'm not going to say anything.</p> <p>9 Q Well, if you're going to raise his 10 attitude at trial, I need to know what 11 you're going to say about it. I'm 12 entitled to know if you think it's 13 relevant. If you don't think it's 14 relevant, then it's not a problem.</p> <p>15 A I think it was very reluctant to listen 16 to my point of view.</p> <p>17 Q Are there any conversations that you had 18 with Mr. Anderson that you think are 19 relevant to the issues in this lawsuit 20 besides the one we discussed in detail 21 earlier?</p> <p>22 A Possibly. I think it was 2005. I don't 23 have exact dates. I do at home. I don't 24 have them here. Mr. Anderson asked to 25 meet me at the property. And I did.</p>	<p>1 Anything coming from the park would go 2 through the culvert just like it does now 3 in the ditch. That would enhance the 4 whole area. And maybe -- if that could 5 be done maybe we could do something.</p> <p>6 He said he'd have to talk to the 7 city, to FERC, to other people. The idea 8 of the perforated sock-covered culvert, 9 we already discussed that back in 1999. 10 The Corps of Engineers was in favor of 11 it. The City was in favor of it. The 12 DNR was in favor of it.</p> <p>13 But it never went anywhere. He 14 said he'd check with all these people and 15 get back to me.</p> <p>16 Q And did he?</p> <p>17 A No. I called him twice over the next two 18 years. One time I got an answering 19 service to leave a message. One time 20 nobody answered.</p> <p>21 I finally got ahold of him in 22 2007 and asked him what he found out. He 23 says, oh, we can't do any of that. Then 24 I found out that he was in Iraq for a 25 whole year. To be honest with you, I</p>
110	
<p>1 Q Okay.</p> <p>2 A He asked me something like, what can we 3 do to get this issue straightened out? I 4 was always reluctant to give up ownership 5 because of the privacy issue that I would 6 give up. But I did throw out some 7 suggestions that may have enticed me to 8 go along with what they wanted.</p> <p>9 The strip of land that they 10 owned east of me between me and the 11 river, there's -- it's brushy. It's 12 overgrown, dead trees. I asked if that 13 could be cleaned up.</p> <p>14 There's a few wetlands in there. 15 I said, do you have the ability to 16 mitigate wetlands? You have a wetlands 17 bank that you use for other projects. I 18 said, is it possible for me when I fill 19 mine that I could fill all the way to the 20 dike?</p> <p>21 The ditch that's there, we could 22 put a perforated sock-covered culvert in 23 there so that any water coming through 24 the dike would go into the culvert and go 25 out just like it does in the ditch.</p>	<p>1 don't think he checked with anybody. So 2 that conversation might come up.</p> <p>3 Q Any other conversations with 4 Mr. Anderson?</p> <p>5 A I think I'll rely on the written 6 documents that were already submitted.</p> <p>7 Q So no?</p> <p>8 A No.</p> <p>9 Q I'm going to ask you some questions about 10 the Green Circle Trail. After you 11 acquired the property, you granted an 12 easement to the Portage County Park 13 Commission?</p> <p>14 A I think they call them the Green Circle 15 Committee or the -- I don't know what 16 they call themselves.</p> <p>17 (Moodie Exhibit No. 5 marked for 18 identification.)</p> <p>19 EXAMINATION</p> <p>20 BY MR. LEE:</p> <p>21 Q Showing you what's been marked Moodie 22 Exhibit 5. Do you need a minute to 23 review it?</p> <p>24 A No.</p> <p>25 Q Do you recognize Moodie Exhibit 5?</p>
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110	
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1	A	Yes.	1		no way of confirming it. It's irrelevant
2	Q	Can you tell me what it is?	2		anyway, isn't it, because they already
3	A	It's a Green Circle Trail agreement.	3		had permission from me?
4	Q	And by this agreement you purport to	4	Q	I can't answer your questions on the
5		grant easement rights to the Portage	5		record. Sorry.
6		County Park Commission to use a portion	6	A	Okay.
7		of your property as part of the Green	7	Q	To your knowledge, other than -- other
8		Circle Trail, correct?	8		than your easement and assuming CWPCo's
9	A	As temporary. It's not permanent.	9		right about its easement, are there any
10	Q	Temporary easement rights, correct?	10		other easements crossing parcel B?
11	A	Right.	11	A	I don't think so.
12	Q	Now, the easement is dated October 20,	12	Q	Are there any other encumbrances on
13		1999, correct?	13		parcel B, covenants or anything?
14	A	Correct.	14	A	No.
15	Q	Prior to that date did you ever see	15	Q	What about the rest of your property?
16		anybody walking or biking or jogging	16		Are there any covenants or other
17		across the top of the dike?	17		encumbrances?
18	A	Not that I recall, no. I think I saw	18	A	Not that I know of. I'm trying to think
19		people fishing out there.	19		of any natural gas lines or anything like
20	Q	In the water -- standing on the dike?	20		that. I don't think there is. There are
21	A	Standing on the dike maybe, yeah.	21		power lines here on this parcel
22	Q	How did this easement document come	22		(indicating).
23		about?	23	Q	Referring to Moodie Exhibit 2?
24	A	This man at the top, Roy Menzl, contacted	24	A	Yeah. I think there's power lines down
25		me. He was a retired person that had	25		here (indicating).
114			116		
1		a -- I think a public relations firm or	1	Q	Talking about the western border of lot
2		something. And he was part of the Green	2		number 3?
3		Circle Committee. And he was out looking	3	A	Uh-huh.
4		for people to help put a trail together.	4		(At this time, the court
5	Q	Were you compensated for granting this	5		reporter admonished the witness
6		easement?	6		to answer verbally.)
7	A	No.	7		THE WITNESS: Yes. And I don't
8	Q	Did you get any tax benefits from it?	8		know if they're permanent easements to
9	A	No. Never claimed any.	9		the power company. They may have just
10	Q	Have you granted any other easements or	10		been used to bring power to the building
11		rights of access across parcel B?	11		that's the old freight terminal. I don't
12	A	No.	12		think it goes out anywhere from there.
13	Q	Or across any portion of your property?	13		EXAMINATION
14	A	No.	14	BY MR. LEE:	
15	Q	Now, you're aware, you know, once we	15	Q	So they're just power lines sitting there
16		finally filed the thing that CWPCo also	16		not servicing anything?
17		granted an easement across parcel B for	17	A	Right. Actually, I had the power removed
18		use of the Green Circle Trail, correct?	18		from this building when the art teacher
19	A	I don't know if they granted permission	19		moved out.
20		over parcel B or just their own dike.	20	Q	Okay.
21	Q	Okay. I see. You understand that CWPCo	21	A	And I paid to have the power taken out.
22		is contending that it granted an easement	22		And they removed a transformer and so
23		across parcel B for the Green Circle	23		forth down over there. So -- so I think
24		Trail, right?	24		probably not. I don't think there's any
25	A	That's what they're contending. I have	25		easements.

	117		119	
1	Q	In your response to CWPCo's proposed findings of fact 71 through 78, you assert that the Green Circle Trail committee, quote, recognized, end quote, that CWPCo lacks authority to grant the easement it purportedly granted across your property. Do you recall stating that?	1	the Green Circle Trail committee made?
2	A	No.	2	A
3	Q	Or anyone with the Portage County Park Commission made?	3	Q
4	A	No.	4	A
5	Q	Now, you contend that the color of the gravel on parcel B and on the dike extending in either direction was different at the time you bought the property, correct?	5	Q
6	A	That's what Mr. Northwood attested to, yeah.	6	A
7	Q	Do you have any basis for that contention other than what Mr. Northwood testified to?	7	Q
8	A	MR. LEE: Okay.	8	A
9	Q	(Moodie Exhibit No. 6 marked for identification.)	9	A
10		EXAMINATION	10	Q
11	BY MR. LEE:		11	A
12	Q	Showing you what's been marked Moodie Exhibit 6. Do you recognize the document?	12	Q
13	A	Yes.	13	A
14	Q	These are your responses to CWPCo's	14	Q
15		proposed findings of fact, correct?	15	A
16	A	Correct.	16	Q
17	Q	If you turn to page 5 of 10, I'll give you a moment to just read 71-78. You can read that whole paragraph. Let me know when you're done.	17	A
18	A	Okay.	18	Q
19	Q	Referring you specifically to the sentence, CWPCo does not have authority to give permission to allow others to use land that they do not own, and the Green Circle Committee recognized that, did I read that correctly?	19	A
20	A	Yes.	20	Q
21	Q	I'm just focusing on everything after the comma.	21	A
22	A	Okay.	22	Q
23	Q	When did the Green Circle Committee recognize that CWPCo doesn't have authority to grant the easement across parcel B?	23	A
24	A	I would guess it was in 1999 when they got the easement from me.	24	Q
25	Q	So when you say that, you're not referring to any statement that anyone on	25	A
	118		120	
1	A	Correct.	1	Q
2	Q	And it's been uniform for a number of years now, correct?	2	A
3	Q	Would you say ten years?	3	Q
4	A	Yeah. Probably. Close.	4	A
5	Q	Referring to Mr. Lemke's -- I'm sorry, Mr. Anderson's statement that a realtor approached Mr. Lemke to gauge CWPCo's interest in buying the property, can you recall that statement from Mr. Anderson, from Exhibit 4?	5	A
6	A	Right.	6	Q
7	Q	Was that the first you'd heard of that meeting with the real estate agent and CWPCo?	7	A
8	Q	Do you know whether Mr. Northwood is the agent referred to in this story?	8	Q
9	A	No, I don't.	9	A
10	Q	Have you ever asked Mr. Northwood about it?	10	Q
11	A	Yes. He did say he did call him.	11	A
12	Q	Mr. Northwood told you that he called Mr. Lemke?	12	Q

	121		123	
1	A	I think he said he called him.	1	we had the draw-down, there was all kinds
2	Q	When did he tell you that?	2	of people up there just looking at the
3	A	Boy. Probably two years ago when this	3	river bed once the water was gone.
4		all started.	4	There's foundations of old buildings out
5	Q	Did he -- strike that. Did Mr. Northwood	5	there and everything else. It was just
6		give you any specifics about what he	6	really interesting for people to see.
7		discussed with Mr. Lemke?	7	She was just one of many that
8	A	I know he discussed -- he said he	8	came by. I remembered that she was there
9		discussed Consolidated's portion with	9	because I knew she was my neighbor. So
10		them to see if they wanted to sell that	10	she, you know, was willing to state that
11		or not and combine it with this. That	11	she saw me there doing it.
12		much he told me. But beyond that, no, he	12	Q Does she have any firsthand knowledge of
13		didn't say anything else.	13	any of the issues in this lawsuit other
14	Q	Do you intend to call Mr. Northwood as a	14	than seeing you move stones from the
15		witness at trial?	15	river bed to the embankment?
16	A	No.	16	A No.
17	Q	Who is David Pagel, P-a-g-e-l?	17	Q Do you intend to call her at trial?
18	A	He is -- he works at Advance Auto, parts	18	A No.
19		salesman.	19	Q Do you intend to call any other witnesses
20	Q	He submitted an affidavit testifying that	20	at trial?
21		he saw you moving stones from the river	21	A Not at this time.
22		bed to the embankment, right?	22	Q Referring to Exhibit 6, I'm looking at
23	A	Right.	23	page 6 of Exhibit 6, paragraph 81. I'd
24	Q	Does he have any knowledge of the issues	24	ask you to quick read that.
25		in this lawsuit other than that	25	A Which one?
	122		124	
1		particular instance?	1	Q Paragraph 81.
2	A	He knows that you're trying to get ahold	2	A Okay.
3		of it.	3	Q In response to proposed finding of fact
4	Q	Okay. Other than that?	4	81, you describe an instance where Tom
5	A	No.	5	Witt of CWPCo, you alleged, trespassed on
6	Q	Do you intend to call Mr. Pagel as a	6	your property. Is that correct?
7		witness at trial?	7	A That's what he said. He didn't say
8	A	No.	8	trespass, but he said he was there.
9	Q	Am I pronouncing that right? Pagel?	9	Q You didn't actually witness this
10	A	Pagel. Or Pagel.	10	incident?
11	Q	Who is Sherri Galle-Teske?	11	A No. This is what he told me. He was
12	A	Galle-Teske. She's my neighbor by my	12	there.
13		house, next door, actually.	13	Q Did he tell you where on your property he
14	Q	Your neighbor. Her name is Sherri,	14	walked on?
15		S-h-e-r-r-i, Galle, G-a-l-l-e, Teske,	15	A He told me he was there with the Army
16		T-e-s-k-e. Does that sound right?	16	Corps of Engineers. And he told me I had
17	A	Right.	17	wetlands. So no. Exactly where his
18	Q	And again she submitted an affidavit	18	footprints were, I don't know.
19		saying she saw you moving stones from the	19	Q Where did he say you have wetlands? What
20		river bed to the embankment?	20	part of the property?
21	A	I was up there. I don't know if it was	21	A Right around in this area right here
22		the first day or second day that she saw	22	(indicating). He never did tell me where
23		me. I think it was the second day. It	23	the wetlands were, no. He just told me
24		was a Sunday.	24	there was wetlands there, which was no
25		I was just throwing rocks. When	25	surprise to me.

125	127
<p>1 MR. LEE: Let the record reflect 2 Mr. Moodie was pointing to Exhibit 2. 3 And he was pointing to the portion of the 4 lot 1 just north of the Green Circle 5 Trail.</p> <p>6 EXAMINATION</p> <p>7 BY MR. LEE:</p> <p>8 Q Did I describe that correctly?</p> <p>9 A That is where the wetlands is. He never 10 said that's where the wetlands were. He 11 just said there were wetlands there.</p> <p>12 Q Okay. You don't know where on your 13 property he --</p> <p>14 A No.</p> <p>15 Q -- walked?</p> <p>16 A No.</p> <p>17 Q But you know he was -- he said he was 18 with the Army Corps of Engineers?</p> <p>19 A Yes. And I told him at that time, don't 20 ever do that again. And he never said 21 anything. So --</p> <p>22 Q To your knowledge, has he or anyone at 23 CWPCo gone back on your property since 24 that incident?</p> <p>25 A Just when they were putting riprap and</p>	<p>1 have an access point.</p> <p>2 Q Is there anything that we haven't covered 3 today that you think is relevant to the 4 dispute and which you intend to present 5 evidence at trial?</p> <p>6 A I'll probably rely on all the 7 declarations and the exhibits that I've 8 already submitted. I'll probably get the 9 comparables that you mentioned. You 10 know, there may be some things that I 11 will bring up that I haven't thought of 12 yet.</p> <p>13 Q Okay. As you sit there today, are there 14 any additional facts that you intend to 15 raise at trial other than what we've 16 covered and what's in the filings?</p> <p>17 A I don't think so.</p> <p>18 Q All the -- strike that. Go ahead.</p> <p>19 A I have requested -- I don't know if you 20 know it or not because my first request 21 was -- I didn't have my address and phone 22 number on, so I refiled it. I would like 23 to get the visitors logs from 24 Consolidated. So that might come up.</p> <p>25 Q Okay.</p>
126	128
<p>1 the stones on.</p> <p>2 Q Did anyone from CWPCo go onto any portion 3 of the upland property, obviously, 4 excluding parcel B, since that incident, 5 since the incident you describe in your 6 response to PFOF 81?</p> <p>7 A I don't know.</p> <p>8 Q Do you have any reason to think that they 9 did?</p> <p>10 A They may have used the driveway to get 11 their equipment in there. I don't know.</p> <p>12 Q What do you base that on?</p> <p>13 A Because I got the only driveway that can 14 get in there other than they have to jump 15 the curb. And maybe that's what they 16 did.</p> <p>17 Q But they can drive -- they can drive 18 their vehicles across the top of the 19 dike, can't they?</p> <p>20 A They can.</p> <p>21 Q And they have a building down near the 22 dam which gives them an access point, 23 right?</p> <p>24 A I don't know if they have a building. 25 They may. I don't know. I think they</p>	<p>1 A For this period. Or I put in there, you 2 know, if you don't want to -- I know 3 there's things on there you don't want me 4 to see, other visitors that came. But if 5 you want to give me a letter saying that 6 I was there and had a meeting with Mark 7 Anderson on the date, that's fine.</p> <p>8 A That's what I'm looking for, if 9 you don't want to produce all the 10 visitors logs. And if I could come up 11 with other ways of proving my meeting, 12 I'll present them.</p> <p>13 Q Okay. Is there any reason, as you sit 14 here today, to believe that any of the 15 statements that you made in your summary 16 judgment submissions are inaccurate or no 17 longer accurate?</p> <p>18 A I tried to be as truthful as I could.</p> <p>19 Q I understand that. I'm just wondering if 20 anything has come to light since then 21 that made you -- that makes any of those 22 statements inaccurate?</p> <p>23 A I don't think so.</p> <p>24 MR. LEE: I don't have any other 25 questions. We're done.</p>

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